

Court No. - 77

Case :- WRIT TAX No. - 626 of 2020

Petitioner :- M/S Ansari Construction

Respondent :- Additional Commissioner Central Goods And Services Tax (Appeals) And 2 Others

Counsel for Petitioner :- Suyash Agarwal, Ankur Agarwal

Counsel for Respondent :- C.S.C., Ramesh Chandra Shukla, Santosh Kumar Singh

Hon'ble Pankaj Bhatia, J.

The present application has been filed with the following prayer:-

" It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this Recall Application and to recall or suitably modify the order dated 24.11.2020 passed by Hon'ble Mr. Justice Pankaj Bhatia, J. in the above noted writ petition to the extent that the directions regarding payment of cost of Rs.10,000/- from the Applicant's salary as well as other observations made personally against the applicant may kindly be directed to be deleted/expurgated from the aforesaid order, and/or, pass such other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, otherwise the applicant shall suffer irreparable loss and injury."

The petitioner further seeks recall of the order dated 24.11.2020 to the extent that it directs for payment of cost of Rs.10,000/- from the applicant as well as the observations made personally against the applicant and prays that the same may kindly be deleted/expunged.

This Court while passing the order dated 24.11.2020 had quoted the show-cause notice dated 29.12.2019 issued to the petitioner therein, the said show-cause notice has been issued by the applicant himself.

Counsel for the applicant Shri Anoop Trivedi, learned Senior Advocate states that infact while uploading the contents to be included in the show-cause notice, the applicant had mentioned the following remarks:-

"Interest due arising from late filing of return has not been paid"

It is argued that the said constituted the reasons for issuance of the said notice. However, he does not disagree that actually the show-cause notice quoted in the order(not containing any reasons) was served upon the petitioner . He further argues that after this order dated 29.11.20 was passed by the Court, an inquiry was conducted wherein it came that the applicant had indeed uploaded the remarks as quoted above, however, the

same were not included in the show-cause notice and the service agency namely 'Wipro' is probably at mistake and the applicant states that it was a technical error for which the technical team is analysing and the outcome would be communicated shortly.

Counsel for the applicant categorically states that the present application has been filed in the personal capacity and he is not defending any action at the behest of the department that may have led to the petitioner to file a petition before this Court.

On the basis of the averment made he argues that this Court ought to quash the cost the imposed against the petitioner as well as the remarks made in the order as against the Assistant Commissioner while referring to the order dated 30.01.2020.

Shri Anoop Trivedi, learned Senior Counsel argues that the applicant in discharge of their functions only are required to upload the reasons and rest all taken care by the service provider and the software system under which the GST operates.

From the submission it appears that the system and the operators are solely responsible for the harassment being meted out to the poor assesses. As the enquiry referred to by Mr. Trivedi is not on record, this Court is unable to decipher whether, the harassment to the taxpayer is a personal one or the system/service provider is to be blamed. Thus, I deem it fit that the respondent no.3 is directed to file its response with regard to the submissions made by the applicant so that this Court may fix the liability on the relevant person.

In view of the fact that this Court is now going to ascertain the liability of the person concerned whosoever he may be, for the glitches that have occasioned harassment to the petitioner and to fix cost thereafter on the person concerned.

This Court is of the view that a direction for payment of cost as against the applicant and the observations shall remain stayed till the next date.

The applicant is directed to serve the copy of the application and the order passed today on the Standing Counsel who shall file its response on or before the next date fixed.

List this petition on 03.02.2021.

Order Date :- 11.1.2021
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