

Court No. - 37

Case :- WRIT TAX No. - 1361 of 2023

Petitioner :- M/S Rathore Building Material

Respondent :- The Commissioner Of State Tax And 2 Others

Counsel for Petitioner :- Puneet Arun

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot,J.

Heard Shri Puneet Arun, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the respondents-State.

By the notice dated 28.01.2023 taken out in purported exercise of powers under Section 46 of the GST Act, the petitioner was asked to furnish the returns within 15 days. The show cause notice dated 28.01.2023 contained the recital that if the returns were tendered in time stated therein, the proceedings shall be withdrawn. The petitioner in response to the said notice furnished the returns on 07.02.2023. The proceedings were liable to be dropped. Instead the authorities went on to impose a penalty under Section 125 of the GST Act by the impugned order dated 10.02.2023.

Shri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the respondents-State could not dispute these facts.

The impugned order also records that the petitioner submitted his reply on 07.02.2023. However, the assessing

authority by the impugned order dated 10.02.2023 while imposing the penalty has also returned the findings that no reply to the show cause notice was tendered by the petitioner. The finding is vitiated on account of non application of mind to the facts in the record.

Admittedly since the petitioner had complied with the terms of the show cause notice by furnishing the returns, there was no lawful justification to impose the penalty.

The impugned orders dated 10.02.2023 and the order dated 14.03.2023 are contrary to law and passed on non application of mind.

In the wake of preceding discussion, the impugned order dated 10.02.2023 and the order dated 14.03.2023 are liable to be set aside and are set aside.

The writ petition (tax) is allowed.

Order Date :- 1.12.2023

Ashish Tripathi