

GAHC010095952023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2704/2023

NATIONAL PLYWOOD INDUSTRIES LIMITED AND ANR
REGD. OFFICE AT MAKUM PATHAR, MARGHERITA-786187, DIST-
TINSUKIA, ASSAM AND HEAD OFFICE AT 5, FANCY LANE, KOLKATA
REPRESENTED BY THE RESOLUTION PROFESSIONAL, SRI AMIT PAREEK

2: AMIT PAREEK
RESOLUTION PROFESSIONAL FOR NATIONAL PLYWOOD INDUSTRIES
LTD.
RAM PRASAD COMPLEX
4TH FLOOR
CHATRIBARI
GUWAHATI-781008
DIST- KAMRUP (M)
ASSA

VERSUS

UNION OF INDIA AND ANR
REPRESENTED BY THE MINISTRY OF FINANCE NORTH BLOCK, NEW
DELHI-110001

2:THE ASSISTANT COMMISSIONER
INCOME TAX
CIRCLE-5(1)
KOLKATA
AAYAKAR BHAWAN
P-7
CHOWRINGHEE SQUARE
KOLKATA-700069
WEST BENGAL

Advocate for the Petitioner : MR. M. KATAKI

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 25.05.2023

Heard Mr. M. Kataki, learned counsel for the petitioners. Also heard Mr. R.K.D. Choudhury, learned ASGI, respondent no.1 and Mr. S.C. Keyal, learned standing counsel for the Income Tax Department, respondent no.2.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside notice dated 17.04.2023, issued by the Assistant Commissioner of Income Tax, Circle-5(1), Kolkata, by which notice was issued under section 148A(b) of the Income Tax Act for the assessment year 2019-20 on the ground that the said authority was satisfied that the income of Rs.7,93,65,393/-, which is chargeable to tax has escaped assessment. The case of the petitioners is that against the petitioner no.1 company, an insolvency proceeding was initiated, which is registered as C.P. (IB) No. 09/GB/2018 and that by order dated 26.08.2019, moratorium was declared under section 13 of the Insolvency and Bankruptcy Code, 2016, and Interim Resolution Professional ('IRP' for short) was appointed. It is projected that once the IRP has been appointed, the Income Tax Department would be barred from initiating any recovery proceeding.

3. The learned standing counsel for the respondent no.2 has referred to the case of *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Custom, (2023) 1 SCC 472*, and it is submitted that the Supreme Court of India has held that while there would be no bar in declaration

of the claim, only in respect of recovery proceedings, the same could be placed before the IRP. Insofar as the said legal position is concerned, the learned counsel for the petitioner does not dispute the same. Nonetheless, the paragraph 57 of the said case is quoted below:

“57. On the basis of the above discussions, following are our conclusions:

i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

4. In view of the said settled legal position, the Court is of the considered opinion that it would be permissible to the respondent no.2, i.e. the Assistant Commissioner of Income Tax, Circle-5(1), Kolkata to proceed with the adjudication and bring the said adjudication initiated vide DIN & Notice No. ITBA/AST/F/148A/2023-24/ 1052138236(1), dated 17.04.2023 in respect of assessment year 2019-20 to its logical conclusion.

5. In the event any taxable amount has escaped assessment, the respondent no.2, in view of the ratio laid down in the case of *Sundaresh Bhatt (supra)*, would be entitled to refer the claim to the IRP for the purpose of recovery, if any.

6. Accordingly, this writ petition stands partly allowed to the extent as indicated above.
7. There shall be no order as to cost.

JUDGE

Comparing Assistant