

GAHC010254832022



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

Case No. : WP(C)/8030/2022

M/S B.L ELECTRICALS
REPRESENTED BY ITS PROPRIETOR, SHRI DEEP GHOSH, NATUNPARA,
TEZPUR, IN THE DISTRICT OF SONITPUR, ASSAM.

VERSUS

UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS,
NEW DELHI.

2:ASSISTANT COMMISSIONER

CENTRAL GOODS AND SERVICE TAX DIVISION

TEZPUR
L.B. ROAD
TEZPUR- 784001.

3:THE SUPERINTENENT (ADJUDICATION)
CENTRAL GOODS AND SERVICE TAX DIVISION

TEZPUR
L.B. ROAD
TEZPUR- 784001

Advocate for the Petitioner : MR. D K BAGCHI

Advocate for the Respondent : SC, GST

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

13.02.2023

Heard Mr. D.K. Bagchi, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel for the Union of India.

2. This writ petition has been filed by the petitioner being aggrieved by the order dated 23.06.2020 passed by the Assistant Commissioner, Tezpur, Central Goods & Service Tax holding that the petitioner is liable to pay Service Tax to the tune of Rs. 47,98,842/- (Rupees Forty Seven Lakhs Ninety Eight Thousand Eight Hundred Forty Two Only). An equal amount was also imposed as penalty as well as Rs. 5,000/- (Rupees Five Thousand) as penalty under Section 77 of the Finance Act, 1994. Being aggrieved, the petitioner approached this Court.

3. The petitioner claims to have executed works-contract in various Government Departments of the State. It is the claim of the petitioner that for the works executed, VAT as applicable was already deducted by the authorities from the payments received. The petitioner claims that he is not liable to pay Service Tax. Pursuant to the Show Cause Notice dated 19.07.2019 whereby the petitioner was asked to show cause as to why service tax should not be imposed and recovered, the petitioner responded by filing a reply. It is the submission of the petitioner that along with the reply dated 20.12.2019, the relevant documents in support of his case was duly enclosed with the reply. Pursuant to the reply filed by notice dated 10.02.2020, petitioner was asked to appear before the Assessing Authority on 24.02.2022 for hearing.

4. The petitioner submits that because of miscommunication or lack of communication, he failed to appear on 24.02.2022. Although he made an

attempt to approach the authority seeking another date of hearing, in the meantime, the COVID-19 pandemic situation arose and the country was under lockdown. Subsequently, he came to be informed that the impugned order date 23.06.2020 was issued by the Assistant Commissioner, CGST, Tezpur imposing the service tax with penalty. Being aggrieved, he has filed the writ petition.

5. Mr. S.C. Keyal, learned Standing Counsel objects to this writ petition on the ground of maintainability as an alternative remedy in the form of an appeal under Section 85 of the Finance Act, 1994 is available and that the petitioner did not approach the authorities to seek the alternative available.

6. Mr. Bagchi, learned counsel for the petitioner, however, submits that in view of the COVID-19 pandemic situation, he was not in a position to avail the statutory alternative remedy provided. He submits that if he is permitted to file an appeal now, he would like to avail the alternative remedy prescribed.

7. Mr. Keyal, learned Standing Counsel does not object to the submissions made.

8. Learned counsels for the parties have been heard. Pleadings on record as well as the provisions of the Finance Act, 1994 are carefully perused.

9. Section 85 of the Finance Act prescribes provision for appeal against any order passed under Sections 71, 72 and 73.

Under Section 85(3) an appeal shall be presented within three months from the date of receipt of the decision or order of the Central Excise Officer provided if the concerned Officer is satisfied that sufficient cause prevented the appeal from being filed within the statutory period of three months, the same may be extended by a further period of six months.

It is also noticed that under Section 84, there is a provision for revision of

the orders by the Collector of Central Excise.

Section 84(2) prescribes that no order which is prejudicial to the assessee shall be passed under this section unless the assessee has been given an opportunity of being heard.

10. Sections 84 and 85 of the Finance Act, 1994 provides for statutory remedy against orders passed against the assessee.

11. By order dated 10.01.2022, the Apex Court in Miscellaneous Application No. 21/2022 extended the period of limitation pertaining to judicial and quasi judicial proceedings from 15.03.2020 till 28.02.2022. As such in terms of the order passed by the Apex Court, the benefit of extension of the limitation period from 15.03.2020 to 28.02.2022 will accrue to all persons concerned.

12. Accordingly, this Court is of the considered view that the appellate authority is empowered to decide the claims of the petitioner vis-à-vis the impugned order dated 23.06.2022 passed by the Assistant Commissioner, Tezpur, CGST. Prima facie, it appears that the petitioner may be entitled to the benefit of the order of the apex Court dated 10.01.2022 whereby period of limitation was extended from 15.03.2020 to 28.02.2022 as well as subsequent Notifications issued by the Department pursuant to the order of the apex Court. As such, in view of the remedy of the statutory appeal available to the petitioner, the petitioner is permitted to approach the appellate authority assailing the impugned order dated 23.06.2020. The appellate authority upon such an appeal being preferred by the

will consider the grievances raised by the petitioner taking due note of the order dated 10.01.2022 passed by the Apex Court and thereafter pass appropriate orders upon giving adequate opportunity of hearing to the petitioner. The

appellate authority will endeavor to pass appropriate order on merits. Till the time the appellate authority passes appropriate order and the impugned order dated 23.06.2020 shall be kept in abeyance.

13. It is directed that the petitioner will file an appeal immediately but not later than four weeks from today i.e., 17.03.2023.

14. Accordingly, the writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant