Circuit Bench of Calcutta High Court at Jalpaiguri

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18.02.2020

W.P.A. 934 of 2019

Ramen Deka, Proprietor of M/s. Ramen Deka (Food Plaza)
Versus
The State of West Bengal & Ors.

Mr. Arijit Chakrabarti
Mr. Rajib Mukherjee.
.....for the petitioner.

Mr. Bikramaditya Ghosh,
Mr. Momenur Rahaman.
.....for the State.

The petitioner is aggrieved by the issuance of FORM GST DRC - 01 dated 1st October, 2019 being a summary of show cause notice for the tax period 1st August, 2018 to 31st August, 2018 followed up FORM GST DRC - 07 dated 1st October, 2019 being the summary of the order for the aforesaid tax period and the Form GST DRC – 13 dated 1st October, 2019 being the notice to a person under section 79 (1) (c) the Central Goods and Services Tax Act, 2017.

According to the petitioner the summary of show cause notice has been issued without mentioning the grounds for reversal of input tax credit. Until and unless an opportunity is given to the petitioner to show cause on the specific grounds as mentioned therein the same ought not to have been issued. The petitioner prays for setting aside the aforesaid impugned Forms.

The respondent opposes the prayer of the petitioner and submits that the decision taken by the authority by issuance of the summary of show cause notice is appealable as per the provisions of Section 107 of the Central Goods & Services Tax Act, 2017 which mentioned that any person aggrieved by any decision or order passed under the Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed.

According to the respondents, the summary show cause notice was a decision taken by the appropriate authority and the petitioner ought not to have been prejudiced by the said summary. The petitioner ought to have approached the Appellate Authority challenging the same prior to approaching the Court under Article 226 of the Constitution of India.

I am not convinced with the submissions made by the respondent.

According to the Rule 142 (1) (a) the officer shall serve along with notice issued under sections 52, 73, 74, 76, 122, 123, 124, 125, 127, 129 and 130 a summary thereof electronically in FORM GST DRC – 01.

In the instant case the notice under Rule 142 (1) (a) was not issued along with any of the notice as mentioned in the aforesaid sections.

Rule 100 (2) mentions that the proper officer shall issue a notice to a taxable person in accordance with the provisions of Section 63 in FORM GST ASMT – 40 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in FORM GST DRC – 01 and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT – 15 and summary thereof shall be uploaded electronically in FORM GST DRC – 07.

It appears from record that the aforesaid provisions of law has not been complied with by the respondents prior to issuance of the impugned Forms.

In view of the above, the instance writ petition is disposed of by directing the concerned respondents to act strictly in accordance with the provisions of law while issuing the relevant Forms to the petitioner.

The impugned Forms being FORM GST DRC – 01, FORM GST DRC – VII, FORM GST DRC – XIII and three FORMs GST DRC – 13 are set aside.

The Bank shall act in accordance with the direction as passed in the order hereinabove.

W.P.A. 934 of 2019 is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all necessary formalities.

(Amrita Sinha, J.)