13-12-2021
Item No.1-8
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.23512 of 2019
M/s LGW Industries Limited & Ors.
–vs-
Union of India & Ors.
with
WPA No.10776 of 2021
Anmol Industries Ltd. & Anr.
-vs-
Union of India & Ors.
with
WPA No.12964 of 2019
Surya Alloy Industries Ltd. & Anr.
-vs-
Union of India & Ors.
with
CAN No.1 of 2021
with
WPA No.6768 of 2020
Raj Metal Industries & Anr.
-vs-
Union of India & Ors.
with
WPA No.6771 of 2020
Raj Metal Industries & Anr.
-vs-
Union of India & Ors.
with
CAN No.1 of 2020
(Old CAN No.5711 of 2020)
with
WPA No.7285 of 2020
M/s. LGW Industries Ltd. & Ors.
-vs-
Union of India & Ors.
with
CAN No.1 of 2020
with
WPA No.8195 of 2020
Victoria Global & Anr.
-vs-
Union of India & Ors.
and
WPA No.8289 of 2021
Raj Metal Industries & Anr.
-vs-
Joint Commissioner, Sales Tax & Ors.

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Ms. Priya Sarah Paul ...for the petitioners
(in all writ petitions, except WPA 12964/2019)

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Mr. N. Chatterjee ...for the State

In view of similarity in facts and questions of law involved in the writ petitions in item nos. 1, 4, 6 and 8 - WPA No.23512 of 2019, WPA No.6768 of 2020, WPA No.7285 of 2020 with CAN No.1 of 2020 and WPA No.8289 of 2021, these are heard together and disposed of by a common order.

The petitioners in those writ petitions are aggrieved by the impugned notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in question and refusing to grant the benefit of input tax credit (ITC) on purchase from the

suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act.

Petitioners have also challenged the constitutional validity of section 16(2)(c) of the CGST/WBGST Act, which, according to me, does not require consideration in these cases, since it appears on perusal of relevant record that the refusal to grant benefit of input tax credit (ITC) to the petitioners are not on the grounds of non-deposit of tax in the Government account by the suppliers which have been collected from the petitioners, under Section 16 (2) (c) of the CGST/WBGST Act.

In these cases, it is the case of the respondents-GST authorities that on inquiry, they came to know that the suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing and the bank accounts opened by those suppliers are on the basis of fake documents and petitioners' claim of benefit of input tax credit are not supported by the relevant documents, and the case of the respondents is also that the petitioners have not verified the genuineness and identity of the aforesaid suppliers who are registered taxable persons (RTP) before entering into any transaction with those suppliers.

Further grounds of denying the input tax credit benefit to the petitioners by the respondents are that the registration of suppliers in question has already been cancelled with retrospective effect covering the transactions period in question.

The main contention of the petitioners in these writ petitions are that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and

identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so, when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction petitioners could not be faulted if they appeared to be fake later on. Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchases in question invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

Considering the facts as recorded subject to further verification it cannot be said that that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.

The petitioners in support of their contention and proposition of law as discussed above rely on the following

decisions:–

1) Commissioner of C. Ex. East Singhbhum v. Tata Motors Ltd. reported in 2013 (294) ELT 394 (Jhar).

2) R.S. Infra-Transmission Ltd. v. State of Rajasthan through its Secretary, Ministry of Finance in Civil Writ Petition No.12445/2016 passed by the High Court of Rajasthan Bench at Jaipur.

3) Commissioner of Trade & Taxes, Delhi & 66 Ors. v. Arise India Limited & Ors. reported in TS-2 SC-2018-VAT.

4) On Quest Merchandising India Pvt. Ltd. v. Government on NCT of Delhi, reported in TS314-HC 2017 (Del)-VAT; 2018 (10) GSTL. 182 (Del);

5) M/s. Tarapore & Company, Jamshedspur v. The State of Jharkhand in W.P.(T) No. 773 of 2018 passed by Jharkhand High Court;

6) Gheru Lal Bal chand v. State of Haryana reported in (2011) 45 VST 195 (P&H);

7) D.Y. Beathel enterprises v. State Tax Officer (Data Cell) Tiruneveli reported in (2021) 127 Taxman. Com 80 (Madras);

8) Taparia Overseas (P) Ltd. v. Union of India reported in 2003 (161) E.L.T. 47 (Bom);

9) Prayagaj Dying & Printing Mills Pvt. Ltd. v. Union of India reported in 2013 (290) ELT 61 (Guj);

10) Star Plastic Industries v. Additional Commissioner of Sales Tax (Appeal) & Ors. reported 2021 SC OnLine Ori 1618; and

11) State of Maharashta v. Suresh Trading Company reported in (1998) 109 STC 439 (SC).

The respondents have relied on the following decisions in support of their contention:–

1) P. R. Mani Electronics v. Union of India reported in 2020 TIOL-1198 HC Mad GST;

2) ALD Automotive Pvt. Ltd. v. The Commercial Tax Officer, reported in 2019 (13) SCC 225;

3) Jayram & Co. v. Assistant Commissioner & Ors. reported in 2016 (15) SCC 125;
4) Godrej & Boycentg & Co. Pvt. Ltd. v. GST reported in 1992 (3) SCC 624;
5) TVS Motors v. State of Tamil Nadu reported in 2019 (13) SCC 403;
(6) Collector of Ex Commissioner v. Douba Cooperative Sugar Mills Ltd. reported in 1988 (37) ELT-478; and
7) D.Y. Bethal Enterprise v. The State Tax Officer (Data Cell) in W.P. (MD) No.2127 of 2021.

Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by remanding these cases to the respondents concerned to consider afresh the cases of the petitioners on the issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners want to rely in support of their claim of genuineness of the transactions in question and shall also consider as to whether payments on purchases in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

If it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

These cases of the petitioners shall be disposed of by the respondents concerned in accordance with law and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners and by dealing with the judgments petitioners want to rely at the time of hearing of the cases, within eight weeks from the date of communication of this order.

These Writ Petitions being WPA No.23512 of 2019, WPA No.6768 of 2020, WPA No.7285 of 2020 with CAN No.1 of 2020 and WPA No.8289 of 2021 are disposed of in the light of observation and directions as made above.

Further, let these Writ Petitions being WPA No. 10776 of 2021, WPA No. 12964 of 2019, WPA No. 6771 of 2020 with CAN No. 1 of 2020 (Old CAN No. 5711 of 2020) and WPA No. 8195 of 2020 be listed for hearing two weeks after the Christmas Vacation.

[Md. Nizamuddin, J]