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25.03.2021
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Calcutta High Court
In The Circuit Bench at Jalpaiguri

WPA 749 of 2021

Amjad Hossain
Vs.
The State of West Bengal and others

Mr. Jagriti Mishra,
Mr. Debayan Goswami

...for the petitioner

Mr. Subir Kumar Saha,
Mr. Bikramaditya Ghosh

.... for the State

The present challenge is preferred against several show-cause notices issued by respondent no.4 for payment of GST dues by the petitioner.

Learned counsel for the petitioner submits that although the direct instance of tax might be construed to be on the contractor, that is, the petitioner in this case, such liability could not have been discharged by the petitioner in the absence of any payment in that regard by the respondent no.5, which authority issued the work order in favour of the petitioner, upon the petitioner being successful in a tender.

Learned counsel for the petitioner places reliance on an unreported judgment of the Patna High Court dated July 5, 2019, inter alia, in Civil

Writ Jurisdiction Case No. 1452 of 2019 for the limited purpose of placing reliance on a Circular issued by the National Rural Infrastructure Development Agency, Ministry of Rural Development, which was the nodal agency in respect of the present contract as well, quoted in the said judgment. Learned counsel submits, by placing reliance on the provisions thereof, that Clause 5A(xi) contemplates that the contractor while raising their bill and tax invoice post-GST, will now collect GST from the employer and will remit the same to the respective Government. As such, in the absence of any such payment, the petitioner's liability could not have accrued.

Learned counsel appearing for the respondent-authorities submits that, in view of a final assessment order having been passed on September 28, 2020 (Annexure P12 at page 43 of the writ petition), prior to the filing of the writ petition, the appropriate remedy of the writ petitioner is to approach the appellate authority under the relevant Act against such order, since the impugned show-cause notices have now merged with the final order of assessment.

Upon hearing learned counsel for both the parties, although an arguable case is found to have been made out by the writ petitioner, the challenge to the show-cause notices as contained in relief (b) of the writ petition has become infructuous. However, the relief claimed against the respondent no.5 to pay pending GST will now depend on the outcome of the appeal, if any, preferred by the writ petitioner against the assessment order dated September 28, 2020.

In the light of the aforesaid circumstances, WPA 749 of 2021 is disposed of with liberty to the petitioner to approach the appropriate appellate authority against the assessment order dated September 28, 2020 (Annexure P12 at page 43 of the present writ petition). The petitioner is further granted leave to file a fresh writ petition seeking a mandamus on respondent no.5 to pay pending GST, depending on the outcome of the appeal.

If such a fresh writ petition is filed, the observations made hereinabove will not prejudice the court while taking up the matter and/or the rights and contentions of the parties on merits. It will be open to the parties to take all contentions before the appellate authority if an appeal is preferred by the writ petitioner as well as in the fresh writ petition, if filed.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)