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WPA 1366 of 2022

M/s. Radiant Enterprises Private Limited & Anr.
Vs
Joint Commissioner, CGST & CX(Appeal-I) & Ors.

Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Ms. Priyanka Sharma
… For the Petitioners.
Mr. K.K. Maiti,
Ms. Ekta Siha
… For the CTST Authority.
Mr. Debsoumya Basak,
Mr. Viswajit Neogi
… For the Respondent No.3.

Heard learned Advocates appearing for the parties and considered the submission of the parties including the written notes of argument.

By this writ petition, petitioners have challenged the impugned order of the Appellate Authority under the CGST Act, dated 31st March, 2021. Though there were two issues involved before the learned Appellate Authority, one was whether the recipients of services or goods can apply for refund claim for excess payment of tax or not and this issue was held in favour of the petitioners by the learned Tribunal. Another issue was whether the building purchased by the petitioners from its purchaser, namely M/s. Eveready Industries Limited is taxable under the CGST Act or not and on this issue learned Appellate Authority has held against the assessees/petitioners by elaborate discussion in its order with cogent reasons and particularly paragraph 7 of the aforesaid impugned order which is very relevant according to me and is quoted hereinbelow:-

"Regarding second issue, I find from the available records that the appellant has entered into an agreement for purchasing a building from M/s. Eveready Industries Ltd who has charged and collected GST @ 18% on sale of such building and the appellant has opined that such purchase being neither supply of goods nor service and should be outside the ambit of GST and has quoted Schedule III of CGST Act in support of their claim. Now, GST is payable on the supply of goods and service of consideration and definition of supply in terms of Section 7 of the CGST/WBGST Act, 2017 includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licensee, rental, lease or disposal mad or agreed to be made for a consideration by a person in the course of furtherance of business. Again, Section 7(2) of the Act specifies which activity will be neither consider as supply of gods nor supply of service i.e.(a) activities or transactions specified in Schedule III or... Further, Schedule III specifically covered under paragraph 5
"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building" Now, Clause (b) of paragraph 5 of Schedule II which specify activities to be treated as supply of services read as "construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier." In the instant case, the appellant contended that the building sold to them after receipt of completion certificate accordingly outside the definition of supply and hence, no GST applicable but their supplier charged and collected GST and deposited in Govt. Exchequer and summated copy of relevant invoice and GSTR 2A in support of their claim, but the appellant did not submit the copy of sale agreement and completion certificate before this forum from where it can be established that they have paid entire consideration for purchasing a commercial building after issuance of completion certificate. Moreover, the appellant did not submit any certificate/letter issued by their purchaser that they have sold the building after issuance of completion

certificate. Now, on going through their submitted purchase invoice, I find that the appellant has purchased a Prefabricated Building classifiable under GST HSN Code 9406 from M/s. Eveready Industries Ltd. Now a prefabricated building, informally a prefab, is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building. Thus, it is evident from the invoice issued by M/s. Eveready Industries Ltd that they have supplied goods classifiable under GST HSN Code 9406 to the appellant which is not specified in Section 7(2)(a) of CGST Act, 2017 and probably used logistic services such as warehousing, flexi-storage by the appellant. Thus, it is evident that M/s. Eveready Industries Ltd have not provided any Construction services of commercial buildings classifiable under GST service code number 99414. Thus, the contention of the appellant cannot be sustainable."

Considering the reasons recorded by the Appellate Authority in holding against the petitioners on the aforesaid issue, I am not inclined to interfere with the aforesaid impugned order. Furthermore, this is not a case where the impugned order is without jurisdiction or there is violation of principle of natural justice or there is any procedural irregularity in the matter and/or Constitutional validity of any provisions of law is involved even though no alternative remedy is available. Accordingly, this writ petition being WPA 1366 of 2022 is dismissed.

(Md. Nizamuddin, J.)