09 22.02.2022
RP Ct. No. 16
AN

MAT 96 of 2022
With
IA No. CAN 1 of 2022

M/s. Ramprasad Gangaprasad & Ors.
vs.
Assistant Commissioner of State Tax Beadon Street Charge & Ors.

Mr. Siddhartha S. Sengupta
Mr. Saurabh S. Sengupta
Mr. Indranil Biswas
Mr. Samiddha S Sengupta

... for the appellants

Mr. Anirban Ray, ld. G.P.
Mr. S. Mukherjee
Mr. Debasish Ghosh

... for the respondents

This appeal is directed against an order dated 21.12.2021 passed in WPA 20136 of 2021. The order impugned in the writ petition was an order of demand passed under Section 74(5) of W.B.G.S.T Act, 2017 dated 23.02.2021.

The learned counsel for the appellants would vehemently contend that the respondents while passing the additional show cause notice has acted wholly without jurisdiction as there is no concept of under invoicing in the provisions of W.B.G.S.T Act, 2017. Therefore, the entire proceeding suffers from total lack of jurisdiction. That apart, various grounds have been raised contending that there has been serious violation of principles of natural justice. All these issues have been pointed out in the reply given by the appellants to the show cause notice vide reply dated 1.10.2021. On going though the reply we find that it is not in the form as submitted before us by the learned counsel for the appellants but some factual information contained therein. The adjudicating authority on receipt of the reply has passed the order and we find that the order is totally devoid of any reasons. The authority has merely stated that the reply given by the appellants is not satisfactory and devoid of reasons, arbitrary and in violation of Article 14 of the Constitution of India. Therefore, on those grounds the entire proceedings can be declared to be unsustainable in law.

We find that in the reply given by the appellants dated 1.10.2021 the contentions have not been framed properly and legally. We are of the considered view that the appellants are entitled to one more opportunity to place the entire factual and legal submissions which the authority should consider and thereafter take a decision in accordance with law by passing a speaking order. For such reasons, the order of demand dated 23.02.2021 shall be treated as additional show cause notice and the appellants are directed to submit their additional reply within two weeks from the date of receipt of server copy of this order. On receipt of the same the concerned authority shall afford an opportunity of personal hearing to the appellants and adjudicate the matter and pass a reasoned order on merit in accordance with law. However, if the appellants raise the question of jurisdiction, the concerned authority should decide the same while deciding the other issues on merit.

In the light of above, the demand, which has been raised on the appellants, shall be kept in abeyance for a period of four weeks from the date of receipt of the server copy of this order within which the adjudication shall be completed.

Needless to mention the appellants shall extend full cooperation with the proceedings without seeking unnecessary adjournments.

The appeal and the connected application stand disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)