

Item no. 11+12

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Supratim Bhattacharya

MAT 855 of 2022

with

IA No. CAN 1 of 2022

IA No. CAN 2 of 2022

Assistant Commissioner of State Tax, ITC Investigation Unit

vs.

LGW Industries Limited & ors.

With

MAT 856 of 2022

with

IA No. CAN 1 of 2022

IA No. CAN 2 of 2022

Joint Commissioner of State Tax, Large Tax Payer Unit,
Corporate Division

vs.

Raj Metal Industries & ors.

Appearance:

For the Appellants
(State)

: Mr. A. Ray, ld. G.P.
Md. T. M. Siddiqui, ld. A.G.P.
Mr. D. Ghosh
Mr. S. Mukherjee
Mr. N. Chatterjee

For the Respondents

: Mr. Vinay Shraff

Writ petitioners Ms. Priya Sarah Paul
 Mr. Kaushal Agarwal

Heard on : 16.09.2022

Judgment on : 16.09.2022

T.S. Sivagnanam J.:

We have perused the affidavit filed in support of the application for condonation of delay and we are satisfied that sufficient cause have been shown in preferring the instant appeals. Hence, the delay is condoned and the application for condonation of delay is allowed.

Heard at length learned counsel for the parties.

These intra court appeals are directed against a common judgment and order passed by the learned Single Judge dated 13.12.2021 though the respondents/writ petitioners had sought for a larger relief in the writ petition mainly for issuance of writ of declaration to declare Section 16(2) (c) of the CGST Act/WBGST Act as unconstitutional and, in the event, the Court holds the provision to be constitutional to read over how the provision by holding that input tax credit will be denied only where the purchasers are proved to be collusive and in the nature of sham transaction. The respondents/writ petitioners also sought for quashing of the memos dated 28.08.2019 and 11.11.2019 though such larger relief were sought for before the learned writ court direction issued by the learned writ court, in our considered view, is a very innocuous direction.

Learned Government counsel for the appellant would submit that the writ petition itself was premature and certain other writ petitions were pending where constitutional validity of the said provision namely Section 16(2)

(c) has been challenged and is still pending before the learned Single Judge. Therefore, it is submission of the learned Government counsel that the State has preferred these appeals on the said grounds.

Learned counsel for the respondents/writ petitioners submitted that the reason why the other writ petitions have been segregated and kept pending is on account of fact situation of those cases and those writ petitions which were disposed of by the impugned order. The only reason for declining the input tax credit was on the ground that the selling dealers' registration was cancelled with retrospective effect. Be that as it may, the larger relief sought for by the respondents/writ petitioners mainly writ of declaration has not been granted by the learned Single Judge. The respondents/writ petitioners are not on appeal as against the said finding.

In such circumstances, we are of the view that the directions issued by the learned Single Judge were not only in the interest of the respondents/writ petitioners, but also would safeguard the interest of the revenue. We say so, because the matter has been sent back to the appellant authority to enable verification of documents, correspondences exchanged between the Department and the writ petitioner which have been referred to as memos, we find that the actual adjudication of the dispute has not taken place which is required to be done before an order is passed either accepting or denying the input tax credit.

Therefore, we are of the considered view that no interference is called for to the direction issued by the learned Single Judge.

In the light of the above, both the appeals being MAT 855 of 2022 and MAT 856 of 2022 are **dismissed** with a direction to the respondents/writ petitioners to submit one more set of documents which they seek to rely upon

to the concerned appellant authority within a period of two weeks from the date of receipt of the server copy of this order and on receipt of these documents, the concerned authority shall afford an opportunity of personal hearing to the authorized representative of the respondents/writ petitioners and peruse the documents, take note of the directions issued by the learned Single Judge and proceed to act on merits and in accordance with law and conclude the proceedings as expeditiously as possible preferably within a period of four weeks from the date on which the personal hearing is concluded.

It is made clear that neither the learned writ court nor this Court has adjudicated the merits of the case and it will be open to the respondents/writ petitioners to canvass all the issues both factual and legal before the concerned authority.

Consequently, all the connected applications to both the appeals stand dismissed.

No costs.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)