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M.A.T. 752 of 2021
With
I.A. CAN 1 of 2021
With
I.A. CAN 2 of 2021

Raj Metal Industries & anr.
Vs.
Union of India & Ors.

Mr. Vinay Sharff,
Mr. Himangsu Kr. Ray,
Ms. Priya Sarah Paul … For the appellants.

Mr. Anirban Ray, Ld. G. P.,
Mr. Talay Masood Siddiqui,
Mr. Debasish Ghosh … For the State.

Mr. Y. J. Dastoor, Ld. A.S.G.,
Mr. Vipul Kundalia,
Mr. Siddhartha Lahiri … For the Union of India.

Mr. Somnath Ganguly,
Mr. Tapan Bhanja,
Mr. Sukalpa Seal,
Mr. Sabnam Basu .. for the respondent nos.4 & 5.

This intra-Court mandamus appeal filed by the writ petitioners is directed against an interlocutory order dated 24th March, 2021 passed in W.P.A No.1629 of 2021. The said writ petition was filed by the appellants praying to quash the entire proceedings initiated by the Joint Commissioner, State Tax, Large Tax Prayer Unit, Kolkata; to issue a writ of mandamus to unlock the electronic credit ledger forthwith. In the event, the first prayer is not granted, in the alternate, to declare Rule 86A of the CGST Rules / WBGST Rules as unconstitutional and *ultra vires* the parent enactment and alternatively, to declare Section 16(2)(c) of the CGST Act / WBGST Act as unconstitutional. Alternatively, to declare that input tax credit can be denied only if the buyer of the goods and services has colluded with the supplier of the goods or services to defraud the revenue and further alternative prayer to direct the respondents not to deny the input tax credit or cancelling the certificate of registration. Interim relief was also sought for to unlock the electronic credit ledger, which was locked on 8th December, 2020 and not to deny the input tax credit. The learned Single Bench passed an interim order on 24th March, 2021 recording a *prima facie* finding that the summons issued by the State GST authorities dated 19th October, 2020 is *prima facie* in violation of Section 6(2)(b) of the WBGST Act. With regard to the blocking of the electronic credit ledger, taking note of the submissions made on behalf of the respondents / State that the State authority was acting as an agent of the Central authority and that it is not a proceeding as indicated under Section 6(2)(b) of the WBGST Act, the learned Single Bench was of the view that affidavit-in-opposition is required to be filed. Challenging that portion of the order in not granting an interim order by directing unlocking of the credit, the appellants are before us.

In our considered view, partial relief has been granted to the appellants in the sense that the summons issued by the State Tax authorities has been stayed. So far as the unlocking of the electronic credit ledger is concerned, the same was locked on 8th December, 2020 and the writ petition was filed some time in the second week of January, 2021. Even prior to the date of locking the credit on 19th October, 2020, summons was issued. Therefore, we are of the view that the learned Single Bench was right in observing that to decide the issue as to whether the State authority has been acting as an agent of the Central authorities in directing the blocking of the credit, affidavit-in-opposition is required to be filed.

Since the State authorities state that it is the Central authority, which has delegated the power, it is for the Central authority to file an affidavit clearly setting out the factual position duly supported by the documents. Therefore, at this juncture, we cannot pass any order by directing the unlocking of the credit as it would tantamount to granting the main relief also even before the affidavit-in-opposition is taken on record.

Further, we note that neither the State authority nor the Central authority have filed any appeal challenging the order of the learned Single Bench granting stay of the summons dated 19th October, 2020.

In the light of the above, while confirming the order passed by the learned Single Bench, we dispose of this appeal with a direction to the appropriate Central authority, viz., the respondent nos.4 and 5 to file an affidavit-in-opposition to the contentions raised by the appellants specifically dealing with as to whether they have nominated the State authority as their agent in the matter of blocking of the credit balance.

Such affidavit-in-opposition be filed not only by the respondent nos.4 and 5 not later than 8th February, 2022 after serving advance copy on the learned counsel for the appellants, in the interregnum, the State authority also, viz., the respondent no.2 shall file its affidavit-in-opposition within the said date after serving copy of the same on the learned counsel for the appellants.

We make it clear that we have not expressed any opinion on the contentions raised before us and all issues are kept open to be decided by the learned Single Bench.

Since the appellants are praying for necessary interim orders, we direct the registry to list the writ petition before the appropriate Bench with a request to the Hon'ble Court to give an early hearing of the writ petition, preferably within three weeks from the date on which the affidavits-in-opposition are duly filed.

The appeal along with the connected application are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)