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WPA 15602 of 2022

M/s. Munjoh Resorts Private Limited & Anr.
Vs
Commissioner of Central Tax, Haldia CGST & Central Excise Commissionerate, & Ors.

Mr. S. P. Majumder,
Mr. Pradyot Kumar Das
... For the Petitioners.
Mr. Vipul Kundalia
Mr. Tapan Bhanja
... For the CGST Authority..
Mr. P. Roy
... For the UOI.

Heard learned Advocates appearing for the parties.

Petitioners have filed this writ petition being aggrieved by inaction on the part of the respondents, Commissioner of Central Tax, Haldia, CGST in considering claim of refund in question by its representation dated 28th March, 202, which according to the petitioners is still pending and has not been considered though according to the petitioners, petitioners are entitled for refund of the same since the petitioners have already filed the appeal before the Appellate Authority concerned by making mandatory pre-deposit of 10% of the demand arising out of the original adjudication order in question and in excess of 10% of the demand after making pre-deposit of the same recovery is not sustainable in law in view of the relevant statutory provision of the CGST Act. Petitioners also rely on three decisions of different

High Courts in support of their contention, which are as follows:

1. 2019(31) G.S.T.L. 58(Bom.) in W.P. No.1151 of 2019, dated 25th September, 2019 (Ramchandra A. Patankar vs. Union of India.)
2. 2021(50) G.S.T.L. 512(Kar.) in W.P. No.2178/2021 dated 10th February, 2021(Unisys India Pvt. Ltd. vs. Principal Commr. Of Central Tax, Bengaluru)
3. WPA 4249 of 2022 dated 30th June, 2022 (Haldia Petrochemicals Limited vs. Assistant Commissioner, CGST & CX, Haldia-II Division, Haldia Commissionerate & Ors.

Mr. Kundalia, learned Advocate appearing for the respondents, CGST Authority concerned opposes this writ petition by contending that for refund of the excess amount beyond 10 % of the demand arising out of the original order, petitioners should approach the Tribunal before which the appeal is pending and he further submits that the decisions petitioners want to rely are distinguishable and not applicable to the facts and circumstances of the case and he further submits that the Commissioner has reduced the demand arising out of the order in original. The facts remain that the respondent authority concerned has recovered the amount of demand from the petitioners more than 10% of the demand which finally arises from the order of the Commissioner after reduction, which action is not legally sustainable in view of the Finance Act, 1994 read with Section 35F of the Central Excises and Salt Act, 1944 read with Circular No. 1053/2/2017-CX, dated 10.3.2017 F.No.96/1/2017-CX.I dated 10th March, 2017 issued by the Central Board of Excise & Customs, New Delhi.

Considering the submission of the parties this writ petition being WPA 15602 of 2022 is disposed of by directing the respondents Authority concerned to refund the money to the petitioner in excess of 10% of the aforesaid demand arising after merger with the order of Commissioner of Appeals, within four weeks from date with statutory interest.

(Md. Nizamuddin, J.)