14 RP AN 06.09.2022 Ct. No. 16

MAT 1413 of 2022
with
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022

M/s. Radiant Enterprises Private Limited & Anr.
vs.
Joint Commissioner, CGST & CX (Appeal-1) & ors.

Mr. Vinay Kr. Shraff
Miss. Priya Sarah Paul
Mr. Kaushal Agarwal
... for the appellant

Mr. Shiv Shankar Banerjee
Mr. Abhradip Maity
... for the respondents

Mr. Deepro Sen
... for respondent no. 3

This intra-Court appeal is directed against the order dated 03.02.2022 passed in WPA 1366 of 2022. The appellant is aggrieved on account of the fact that reliefs were sought for in the writ petition which according to the appellant lies in a very narrow campus that could have been considered as it is manifest on the face of the orders passed by the appellate authority namely, the Commissioner of CGST & CX (Appeals), Calcutta-1.

The contention of the learned counsel for the appellant is that as could be seen from the order passed by the appellate authority, two issues were dealt with by the appellate authority, the first of which was whether the recipient of service of goods can apply for refund claims for excess payment of tax or not. The appellate authority framed a second issue as to whether the building purchased by the appellant from M/s. Eveready Industries Ltd. Is taxable under the GST or not.

Learned counsel for the appellant submitted that the second issue was never on the part of the show cause notice issued by the adjudicating authority at the very first instance. After adjudication, the order in original dated 13.11.2019 was passed which was against the appellant inasmuch as it held that the appellant was not entitled to apply for excess payment of tax on the ground that he is a recipient. Again on such finding, the appellant had filed the appeal and the appellate authority has decided such issue in favour of the appellant reversing the finding of the original authority.

Therefore, it is the submission of the learned counsel for the appellant that in an appeal filed by the appellant before the first appellate authority, the appellant cannot be the worse of situation wherein a negative finding recorded against him.

Learned senior counsel for the respondent submitted that it is incorrect to say that the original proceedings did not cover the second issue and in this regard, he has referred to the notice in the form of GST-RED-08 dated 24.09.2019. It is further stated that in the said notice, reason for rejection has been given which will encompass all issues.

In any event, the learned Single Judge had directed affidavits to be filed as in the opinion of the learned Single Judge certain factual issues need to be clarified. Therefore, we are of the view that at this stage, it would not be appropriate for the Division Bench to interfere with such an order as the writ petition could be disposed of at an early date as the issue lies in a very narrow campus.

Thus, we make it clear that we have not expressed any opinion on merits of the matter and it would not be left open to parties to agitate all issues both factual and legal in the pending writ petition. Learned counsel for the appellant submitted that substantial amount of refund is still pending.

Hence, the respondent nos. 1 and 2 are directed to file affidavit-in-opposition within 5 working days from the date of server copy of this order and serve an advance copy on the learned counsel for the appellant and reply, if any, within 3 days thereafter. The Registry is directed to list the matter before the appropriate Bench after ascertaining the convenience of the appropriate Hon'ble Bench preferably within 10 days from the date on which the pleadings are completed.

With the above observations, the instant appeal and the connected applications thereto stand **disposed of**.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)