WPA 20025 OF 2022

19.09.2022
Sl no. 20
Ct no. 2
P.M.

M/s. R.P. Buildcon Private Limited & Anr.
- Vs -
The Superintendent, CGST & CX, Circle – II, Group-10, Audit-I Commissionerate & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
... for the petitioners

Mr. K.K. Maiti,
Ms. Ekta Sinha
.... For CGST Authorities

Mr. Sujit Bhunia
... for Union of India

Affidavit of service filed in Court is kept with the records.

Heard learned counsel appearing for the parties.

By this writ petition, petitioners have challenged the impugned notice dated 18th May, 2022 issued by Superintendent, Anti Evasion, CGST, asking the petitioner to furnish the documents as hereunder : -

i) *Copies of Income and Expenditure statement from F.Y. 2017-18 to F.Y. 2021-22 supported with trial Balance;*

ii) *Copies of Annual Report, ITR from F.Y. 2017-18 to F.Y. 2021-22 and Form-26AS (upto date);*

iii) *Copies of party ledger from F.Y. 2017-18 to F.Y. 2021-22;*

iv) *Details of debtors account as on 31.03.2017;*

v) *Purchase/sale Bill statement for April 2017 to March 2022 supported with Bank statement, e-way bills, etc.;*

vi) *Copies of relevant Work orders supported with payment particulars;*

vii) *Any other relevant document in this regard.*

The ground of challenge is that since the audit in respect of very same financial years have already been completed by another wing of the department of the CGST, it cannot initiate any further new proceeding or take any action against the petitioner but he could not show any specific provision under the Act which prohibits or bars the authority who has initiated the impugned anti evasion proceeding.

In support of his contention learned advocate for the petitioners relies on a decision of this Court dated 22nd April, 2022 in the case of Ideal Unique Realtors Private Limited & Ors. – Vs – The Union of India & Ors. in FMA 297 of 2022 and I.A. No. CAN 1 of 2022 and on perusal of the said decision of the Hon'ble Division Bench I find that the same is distinguishable and is not applicable to the present case both on facts and on law.

It appears that in the said decision the audit department was repeatedly issuing spot memos which appears from the following paragraph of the said order : -

1. *This intra Court appeal is directed against the order dated 22nd November, 2021 in WPA No. 15695 of 2021. The appellants/writ petitioners challenged the jurisdiction of the 7th respondent, the Sr. Audit Officer/SSCA-FAP-4 in issuing two communications both dated 22nd March, 2021 enclosing a memo called as "spot memo". The appellants questioned the action of the 7th respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the audit department to issuer such a notice and in this regard, places reliance on the decision of the High court of Bombay in Kiran Gems Private Limited – Vs – Union of India. This decision was relied on for the proposition that the Central Excise Revenue Audit*

(CERA) cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated 15th May, 2018 for which the appellants had submitted their reply on 15th June, 2018 along with the documents called for . For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal unit had issued summons dated 11th July, 2018 for which the appellants had submitted their reply on 24th July, 2018. Thereafter, DGGI issued notice dated 15th November, 2019 and thereafter another notice dated 18th November, 2019 was issued by the 5th respondent and summons dated 2nd January, 2020 for which the appellants have responded and submitted the requisite documents.

2. *The appellants appeared before the authority in response to the summons on 14th January, 2020 and stated to have submitted the requisite document. In spite of the same, the*

Superintendent, Range – III, Park Street Division, CGST & CX, Kolkata South Commissionerate had issued two communications dated 22nd March, 2021 enclosing two spot memos.

3. *The question would be whether the appellants can be dealt with in such a fashion by the respondents department. From the records placed before us, we find that none of the proceedings initiated by the department has been shown to have been taken to the proceedings initiated by the department has been shown to have been taken to the logical end. If, according to the respondents department, there is an irregularity in the availablement of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.*

It appears that the present case is not like the said case. In the said case none of the proceedings initiated by the department was shown by taking a logical end or that the proceedings were initiated without affording any due opportunity to the petitioners therein.

I find that the impugned notice is almost a show-cause notice and I also find that the same is neither without jurisdiction nor there is any procedural irregularities in initiating the impugned proceeding nor the impugned proceeding has been initiated in contravention of any statutory provisions of the statute and such I am not inclined to interfere with the investigation by initiation of impugned anti evasion proceeding at this stage.

In view of the discussion made above I am not inclined to entertain this writ petition being WPA 20025 of 2022 and accordingly the same is dismissed.

(Md. Nizamuddin, J.)