09-02-2022
Item No.3
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.7589 of 2020
Finex Merchants Pvt Ltd
-vs-
State of West Bengal & Ors.

Mr. Suryaneel Das ...for the petitioner

Md. T.M. Siddiqui
Mr. D. Ghosh ...for the State

In this writ petition, petitioner has challenged the impugned adjudication order dated September 4, 2019 by contending that in view of amendment to section 50 sub-section (1) of the GST Act, 2017 and the order of the appellate authority dated September 2, 2020 in connection with interest under section 50 sub-section (1) of the GST Act relating to the assessment year 2017-18, the aforesaid impugned order of adjudication relating to interest is not sustainable in law.

Section 50 sub-section (1) of the GST Act, 2017 which has been amended by the Finance Act, 2021 under section 112 of the Finance Act is quoted hereunder:–

> "112. In section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July 2017, namely:–
>
> Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger."

In view of this legal position as stands now due to the aforesaid amendment, the impugned demand arising out of the impugned adjudication order dated September 4, 2019 is not sustainable and accordingly the impugned order of the appellate authority dated September 2, 2020 in connection with the demand relating to interest is set aside.

Petitioner further submits that it had paid Rs.30,58,973/- as pre-deposit. Since the adjudication order is being set aside due to the retrospective change in law, petitioner is entitled to get refund of the same, and accordingly respondent concerned shall verify the refundable amount as claimed by the petitioner which, according to the petitioner, is 30,58,973/-; and on verification, if it is found that claim of the petitioner is correct, in that event respondent concerned shall refund the same, within a period of four weeks from the date of communication of this order by taking into consideration the aforesaid amendment.

With the above observation and direction, this writ petition being WPA No.7589 of 2020 stands disposed of.

[Md. Nizamuddin, J]