Item No.2

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 14.07.2022

DELIVERED ON: 14.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 765 of 2022

Rakesh Manda

VERSUS

Assistant Commissioner of CGST & Central Excise, Cooch Behar Division & Ors.

Appearance:-
Mr. Sandip Choraria,
Mr. Rajeev Parik,
Ms. Esha Acharya .....for the Petitioner

Mr. Subir Kumar Saha, Ld. Additional G. P.,
Ms. Bedashruti Bose .. for the State.

Mr. Ratan Banik ... for the respondent nos.1, 2 and 5.

JUDGMENT

(Judgment of the Court was delivered by* HIRANMAY BHATTACHARYYA, *J.)

1. The petitioner has prayed for a writ of Mandamus for setting aside the order dated November 26, 2019 passed by the

Assistant Commissioner of CGST and Central Excise, Cooch Behar Division being the respondent no.1 herein and the order dated February 24, 2021 passed by the Additional Commissioner of CGST and Central Excise, Siliguri Appeals, Siliguri in Appeal File No.GAPPL/ADC/GSTP/119/2020/Slg-Appeal. The Adjudicating Authority rejected the prayer for refund claimed by the petitioner/assessee by filing an application under Section 54 of the Central Goods and Services Act, 2017 (for short, "CGST Act, 2017"). Being aggrieved, the petitioner preferred a statutory appeal before the respondent no.2. The respondent no.2 by the order dated February 24, 2021 dismissed the appeal only on the ground that requisite documents were not submitted at the adjudicating stage.

2. Mr. Choraria, learned Advocate appearing for the petitioner, submits that no deficiency memo was ever served to the petitioner for which the petitioner could not support his claim for refund by submitting requisite documents. He further submits that the petitioner submitted the requisite documents before the appellate authority but such authority without taking into consideration such documents dismissed the appeal.

3. Mr. Banik, learned Advocate appearing for the respondent authorities, however, disputes the submission of Mr. Choraria

that no deficiency memo was ever served to the petitioner. He further submits that a specific procedure has been laid down for claiming refund and the assessee in order to claim refund has to submit requisite documents at the adjudication stage. He further submits that the petitioner failed to satisfy the appellate authority that he was prevented by sufficient cause from producing the documents before the Adjudicating Authority and as such, the appellate authority was justified in dismissing the appeal. He further submits that the intimation was given to the petitioner/assessee through their registered email address with regard to submission of those documents at the adjudicating stage.

4. Heard the learned Advocates for the parties and perused the materials placed.

5. Without entering into the dispute as to whether the petitioner/assessee was intimated as to the documents which are necessary to be submitted for claiming refund, this Court is of the considered view that the appellate authority ought to have taken note of the documents which were filed by the petitioner/assessee before the appellate authority in support of his claim for refund. Such finding is supported by the reasons assigned hereinafter.

6. It will appear from the order passed by the appellate authority that the petitioner has submitted the following documents:-

> *"4. Alongwith the appeal petition (GST APL-01), the appellant have submitted the following documents:*
>
> *(i) GST-RFD-06*
>
> *(ii) GST-RFD-01A alongwith ARN receipt,*
>
> *(iii) Statement-3 [in accordance with rule 89(2)(b) & 89(2)(c) of the CGST Rules, 2017]*
>
> *(iv) GSTR-2A,*
>
> *(v) Declaration [in accordance with second proviso to section 54(3) of CGST Act, 2017]*
>
> *(vi) An undertaking to pay back the refund alongwith interest if it is found subsequently that the requirements of section 16(2)(c) of CGST Act, 2017 have not been complied with,*
>
> *(vii) Declaration [in accordance with section 54(3)(ii) of CGST Act, 2017]*
>
> *(viii) Bank Account details,*
>
> *(ix) Vakalatnama in favour of Sri Rajeev Parik, Advocate."*

7. Rule 112 (1) of the Central Goods and Services Rules, 2017 (for short, "CGST Rules, 2017") permits an appellant to

produce additional evidence before the appellate authority under certain circumstances. Sub-Rule (4) of Rule 112 starts with a non-obstante clause and provides that nothing contained in Rule 112 shall affect the power of the appellate authority to direct the production of any document or the examination of any witness to enable it to dispose of the appeal. Thus, the appellate authority has the power to permit the appellant to produce documents which will enable it to dispose of the appeal effectively. The appellate authority while refusing to consider the documents filed by the appellant at the appellate stage did not assign any reason as to whether such documents are necessary for the purpose of disposal of the appeal or not.

8. The learned Advocate for the respondents also could not satisfy this Court that the documents produced by the petitioner before the appellate authority are not necessary for the effective disposal of the appeal. The appellate authority, in the considered view of the Court, failed to exercise the jurisdiction vested in him by law in refusing to consider the documents filed by the petitioner/assessee before the appellate authority.

9. For the reasons as aforesaid, the order dated February 24, 2021 passed by the Additional Commissioner of CGST and Central Excise, Siliguri Appeals, Siliguri being the respondent no.2 herein is set aside and quashed. The appellate authority is directed to rehear the appeal being Appeal File No.GAPPL/ADC/GSTP/119/2020/Slg-Appeal after taking into consideration the documents filed by the petitioner/assessee which has been specifically recorded by the appellate authority in paragraph 4 of the impugned order and after giving an opportunity of hearing to the petitioner /assessee and /or his authorized representative and to dispose of the same as expeditiously as possible, preferably within a period of four weeks from the date of service of the server copy of this order.

10. With the above directions, WPA No.765 of 2022 stands allowed without, however, any order as to costs.

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

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)