27.02.2023
PB
Sl. No.26.

WPA 2763 of 2023

Midaas Construction company Private Limited
Vs
State of West Bengal & Ors.

Mr. Avra Mazumder,
Mr. Suman Bhowmik,
Mr. Samrat Das.
... For the Petitioner.

Mr. A. Ray,
Mr. S. Mukherjee,
Mr. T. M. Siddiqui,
Mr. D. Ghosh,
.......for the State.

Heard learned advocates appearing for the parties.

This writ petition has been filed by the petitioner being aggrieved by the action of the respondent GST authority concerned denying the benefit of Input Tax Credit (ITC) by the impugned order dated 2nd December, 2022, to the petitioner on purchase of the goods in question from the supplier and asking the petitioner to pay the penalty and interest under the relevant provisions of GST Act, on the ground that the registration of the supplier in question has already been cancelled with retrospective effect covering the transaction period in question. Petitioner has also challenged the impugned order dated July 18, 2022 being Annexure P-6 to the writ petition, under Section 73 of the WBGST Act.

The main contention of the petitioner in this writ petition is that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contended that petitioner with his due diligence has verified the genuineness and identity of the supplier in question and more particularly the names of this supplier as registered taxable person was available at the Government portal showing his registration as valid and existing at the time of transactions in question and petitioner submits that he has limitation on his part in ascertaining the validity and genuineness of the supplier in question and he has done whatever possible in this regard and more so, when the name of the supplier as a registered taxable person was already available with the Government record and in Government portal at the relevant period of transaction, petitioner could not be faulted if the supplier appeared to be fake later on. Petitioner further submits that he has paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioner is helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioner could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioner/purchaser and the supplier in question. Petitioner further submits that the purchases in question invoices-wise were available on the GST portal in form GSTR-2A which is matters of record.

Considering the facts as recorded, without any further verification it cannot be said that that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question and that there was no verification of the genuineness of the supplier in question by the petitioner during the relevant period.

Petitioner in support of his contention has relied on reported judgments of this Court dated 13th December, 2021 in similar cases in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors., in W.P.A No.23512 of 2019 (2021) (12) TM 1834 (Cal) pages 6 & Sanchita Kundu & Another Vs. Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal & Ors in WPA 7231 of

2022 with WPA 7232 of 2022 reported in (2022) 5 TMI 786 (Cal).

Considering the submission of the parties and facts on perusal of records available, this writ petitions is disposed of by setting aside the aforesaid impugned order and remanding this case of the petitioner to the respondent officer concerned to consider afresh on the issue of his entitlement of benefit of input tax credit in question by considering the documents which the petitioner intends to rely in support of his claim of genuineness of the transactions in question and the respondent concerned shall also consider as to whether payments on purchases in question along with GST were actually paid or not to the supplier (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to compliance of statutory obligation by the petitioner in verification of identity of the suppliers (RTP).

If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of the supplier and after taking into consideration as to whether facts of the petitioner is similar to the judgements of the Supreme Court and various High Courts and of this Court upon which petitioner intends to rely and if it is found similar to the present case in that event the petitioner shall be given the benefit of input tax credit in question.

The case of the petitioner shall be disposed of by the respondents concerned in accordance with law and in the light of the observations made above, by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioner or its authorized representatives, within eight weeks from the date of communication of this order.

This Writ Petition being WPA No.2763 of 2023 is disposed of in the light of observation and directions as made above.

In view of setting aside the impugned adjudication order, impugned appellate order being Annexure P-6 and Annexure P-10 also stands set aside.

(Md. Nizamuddin, J.)