

04.01.2023

Court : 04
Item : PB-135
Matter : WPCT
Status : DO
Transcriber: nandy

WPCT 21 of 2022
with
CAN 1 of 2022

Vikrant Nayak
Vs.
Chairman,
Central Board of Indirect Tax & Customs & Ors.

Mr. Siddhartha Banerjee, Advocate
Mr. Saptarshi Banerjee, Advocate
Mr. Kuntal Banerjee, Advocate
Mr. Soumajit Majumdar, Advocate

.....for the Petitioner

Mr. K.K. Maity, Advocate
Mr. Abhradip Maity, Advocate
Ms. Shatabdi Sen, Advocate

.....for the CGST Authority

Mr. P.C. Das, Advocate

.....for the Respondent Nos. 8 to 47

Though the leave was granted to file the instant writ-petition at the behest of the writ-petitioner being a non-party to the tribunal proceeding but at the time of hearing of the instant writ-petition, we find that the manner in which the order dated 18.02.2021 passed in OA 259 of 2021 is construed, does not appear to us to have put any impediment on the part of the respondents in proceeding on the basis of the review DPC except against the applicants of the tribunal proceedings.

It is pointed out by the learned Advocate of the petitioner that the affidavit filed by the respondent no. 4 herein would evince that the said order has been construed differently which impedes the rights of the writ-petitioner accrued in his favour.

We have seen from the affidavit-in-opposition filed by the said respondent no. 4 where they have interpreted the order dated 18.02.2021 and does not intend to make any comment thereupon as the language of the order dated 18.02.2021 is explicit, clear and lucid and conveys the intention of the Tribunal without creating any confusion and/or ambiguity in this regard. However, the writ-petitioner still felt aggrieved by the said order and the instant writ-petition is intended for clarification thereof for which we do not think that it would be a proper forum for such purposes.

The writ-petitioner claims benefit on the basis of the review DPC proceeding and, therefore, if any clarification of the order dated 18.02.2021 is required, the writ-petitioner can approach the Tribunal. Since the proceeding has taken a long time and the stand of the respondent no. 4 creates a confusion, we feel that it would be proper that the writ-petitioner should be impleaded as party in the said tribunal application. In exercise of power conferred under Order I Rule 10(2) of the Code of Civil Procedure, which can even be exercised *suo motu*, we implead the writ-petitioner as a party to the tribunal application.

The applicants of the tribunal application who are represented before us, are directed to serve the copy of the tribunal application upon the learned Advocate-on-record in this regard in course of this week.

Liberty is granted to the writ-petitioner to make an application before the Tribunal agitating and/or raising the claims which have been raised in instant writ-petition and if such recourse is undertaken, it is expected that the Tribunal shall decide the same within three weeks from the date of the filing of the said application after affording an opportunity of hearing to the applicants of the tribunal application and upon recording proper reasons thereof.

Nothing observed hereinabove, shall be construed to have any impact on the claim raised by the writ-petitioner in the instant writ-petition and such dispute shall be decided independently on the basis of the pleadings filed by the parties.

With these observations, the writ-petition being **WPCT 21 of 2022** is **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

