

04 12.05.2023
 RP Ct. No. 01
 AN

MAT 791 of 2023
 with
 IA No. CAN 1 of 2023

Earthmark Traders
 Vs.
 Joint Commissioner, State Tax,
 Chinabazar & Rajakatra Charge & anr.

Mr. Vinay Kr. Shruff
 Ms. Priya Sarah Paul
 Ms. Sanchita Dey

... For the Appellant

Mr. A. Ray, Ld. G.P.
 Mr. T.M. Siddiqui
 Mr. D. Ghosh
 Mr. N. Chatterjee
 Mr. D. Sahu

... For the State

1. Heard learned counsel for both the parties elaborately.

2. This intra-Court appeal is directed against the order dated 04.05.2023 passed by the learned Single Bench in WPA 7905 of 2023 thereby declining to grant interim order in the writ petition. It is true that the prayers sought for in the writ petition are to quash the order passed by the original authority dated 14.09.2021 rejecting the claim for refund of the un-utilised input tax credit and also the order passed by the appellate authority affirming such order. However, at the request of the learned counsel of the either side, the writ petition is considered and taken up for disposal since the dispute lies in a narrow campus.

2. It is submitted that the principal place of

business and additional place of business of the appellant were inspected by the authorities of the respective Department and the findings which emerged during the course of inspection conducted on 18.08.2021 was communicated to the appellant by memo dated 27.01.2022. In the said memo, various allegations have been made and the appellant was called upon to produce corroborative documents within the time frame. The list of documents which were directed to be produced are ten in number. It is further submitted that the appellant by representation dated 08.02.2022, sought for extension of time to reply to the memo dated 27.01.2022 and also sought for copies of the document. By reply to the memo no.160 dated 20.04.2022, the appellant was directed to collect the copies of the documents considered by them on or before 26.04.2022 and the appellant was allowed an opportunity to represent its case on 27.04.2022. In terms of the liberty granted, the appellant is stated to have uploaded its reply wherein it has been mentioned that copies of the documents will be submitted to the authority in physical form as it is voluminous, the same cannot be uploaded in the system. It is also not clear as to what happened thereafter but the appellant was issued show cause notice dated 28.08.2021 calling upon the appellant to show cause as to why the refund claim should not be rejected or the amount erroneously refunded should not be recovered. The allegation made in the show cause notice is an outcome of the inspection which was conducted on 18.08.2021, and if

that be so, the authority while issuing the show cause notice ought to have considered the appellant's response to the memo dated 27.01.2022 as well as the documents which were produced by the appellant before the authority which are 14 in number. However, the show cause notice is absolutely silent on that aspect and it proceeds to reject the claim for refund on the ground that additional place of business was never in the possession of the appellant. In any event, the show cause notice has been issued pursuant to the inspection, it goes without saying that the appellant's response to the findings as emerged during the inspection, should have been taken note of and, only thereafter, the show cause notice could have been issued. Therefore, this is a fundamental error which has occurred. The appellant was probably under the presumption that the authority had kept silent regarding the documents submitted by it which, ultimately, led to passing of the final order dated 14.09.2021 wherein the authority has recorded that the appellant has not replied to the show cause notice. The appellant preferred an appeal before the Appellate Authority viz. the Joint Commissioner, State Tax, Chinabazar and Rajakatra Charge. The appeal was dismissed. On a reading of the order passed by the Appellate Authority, we find that the Appellate Authority has proceeded on a different footing by restricting the consideration of the grounds of appeal with reference to the correctness of the order passed by the original authority. The Appellate Authority has recorded a finding that he has reason to believe that the evidence does

not prove the claim of the appellant that the goods were exported and, therefore, the refund claim is not sustainable. It is rather doubtful as to whether the appellate authority could have rendered such findings since the appellant has already received input tax credit for valid export. This is also one of the errors which has crept in. In any event, the appellate authority could not have travelled beyond the allegation of the show cause notice as pointed out earlier, the show cause notice itself is defective on account of non-consideration of the submission of the appellant to the memo dated 27.01.2022 and non-consideration of the documents which were produced by the appellant alongwith its response to the said show cause notice. Therefore, we are of the view that matter has to be heard out afresh after giving an adequate opportunity of hearing to the appellant.

3. For the above reasons, both the appeal and the writ petition stand **allowed** and the order passed by the Original Authority and the Appellate Authority are set aside. The matter shall stand remitted to the Original Authority. The Original Authority shall allow the assessee to submit additional explanation to the allegations contained in the show cause notice dated 28th August, 2021 and file additional documents and after which an opportunity of personal hearing to the authorized representative of the appellant shall be afforded. The Original Authority shall consider the entire submission including the submission of documents which were made by the appellant/assessee in response to the memo dated 27th January, 2022. The

Original Authority shall take decision on merit and in accordance with law without being uninfluenced by any of the observations made by him earlier as well as the Appellate Authority which is set aside. Consequently, the connection application also stands allowed.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)