08 23.06.2023
RP Ct. No. 01
AN

MAT 1123 of 2023
with
IA No. CAN 1 of 2023

M/s. APL Metals Ltd. & Ors.
Vs.
Senior Intelligence Officer, Directorate General of Goods and Services Tax Intelligence (DGGI) & ors.

Mr. Vinay Kr. Shraff
Miss. Priya Sarah Paul
Mr. Rohit Banerjee
… For the appellants

Mr. K.K. Maity
Mr. Tapan Bhanja
Mr. B.P. Banerjee
… For the respondents

1. This intra-Court appeal is directed against the order dated 13.06.2023 passed in WPA 11335 of 2023. There were two prayers made by the writ petitioners, first one is to conclude the investigation which has been commenced by the respondent department and the second one is to refund the amount of cash, which was deposited by the appellants. The learned writ Court had allowed the first prayer and directed the respondent authority to conclude the investigation arising out of search and seizure proceeding in accordance with law. So far as the second prayer to refund the cash deposited by the appellants, the learned writ Court had observed that the said prayer shall abide by the final order passed by the authority. Aggrieved by that portion of the order, the appellants are before us by way of this appeal.

2. We have elaborately heard the learned advocates for the parties.

3. It is the contention of the appellants that even without issuing a show cause notice, an amount has been recovered which is against the well-settled principles of law. Therefore, the amount, which has been recovered, has to be refunded and re-credited to the appellants' account.

4. Learned senior counsel appearing for the respondent authorities submitted that it is not the case of recovery but it is a case of voluntary payment and the Central Board of Indirect Tax and Customs has clarified the same in instruction 1/23/22-23 dated 25.5.2022 wherein while stating that there may not arise any situation where recovery of tax is to be made by the tax officer from the taxpayer during the course of search or investigation or inspection on account of any issue detected during such proceeding. The circular further clarifies that however the law does not bar the taxpayer from voluntarily making any payment of any tax liability ascertained by him or by the tax officer in respect of such issues either during the course of such proceeding or subsequently. Thus, the disputed question would be whether the tax would be recovered from the taxpayer, who had voluntarily made the payment. This disputed question cannot be adjudicated in the writ petition. Therefore, we are of the view that the investigation, which has been commenced, should be concluded at the earliest and show cause notice should be issued to the appellants so that the appellants will be able to put forth their grievances by way of a reply. It is pointed out by the learned senior counsel for the respondent that by representation dated 2nd February, 2023 the appellants had sought for extension of time for submission of documents. This letter is shown for the purpose of demonstrating the conduct of the appellants, who appear to be cooperating with the ongoing investigation.

5. In the light of the above stand, we dispose of the appeal by directing the respondent authority to conclude the investigation within a period of three months from the date of receipt of the server copy of this order. In the meantime, the appellants shall submit all documents and, if necessary, a written representation can be made before the investigating authority. After considering all the matters, the investigation shall be concluded and a show cause notice should be issued to the appellants. While giving reply to the show cause notice it is well open to the appellants to raise the issue with regard to refund of the cash, which according to the appellants, was recovered and not voluntarily deposited. The Adjudicating Authority shall adjudicate this issue also amongst several issues that may arise in the show cause notice. The adjudication proceeding shall be completed as expeditiously as possible preferably within a period of three months from the date of submission of reply to the show cause notice and is heard in person.

6. Hence, the instant appeal stands **disposed of.** Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam)
Chief Justice

(Ajay Kumar Gupta, J.)