01.09.2023
Item No.12
RP/PG
Ct. No.1

MAT 1275 of 2023

Commissioner of Commercial Taxes & Anr.
Vs.
Steel Authority of India Limited & Ors.

Mr. Anirban Ray, Ld. G.P.
Mr. T.M. Siddiqui
Ms. Tanoy Chakraborty
Ms. Saptak Sanyal
Mr. Suddhadev Adak
... for State/Appellants
Mr. Satyaprem Majumder
Mr. Pradyot Kr. Das
... for Respondent (SAIL)

1. This intra-Court appeal is directed against the order dated 13th June, 2022 passed in WPA 8612 of 2022.

2. It is not disputed by the learned counsel appearing for the appellants that identical issue was decided by this Court in FMA 857 of 2022, which was dismissed by judgement dated 23rd November, 2022 and apart from that in MAT 161 of 2023, this Court had dismissed the appeal filed by the State of West Bengal.

3. The operative portion of the judgement reads as follows:-

> *"2. In the result, the appeal filed by the department is dismissed and the issues, which were raised are answered in the following terms:-*
> ***Issues:-***

(1)*The writ petitioner/ purchasing dealer has locus standi to maintain the claim for refund of the excess tax collected directly to them and the writ petition is maintainable.*

(2) *To be entitled to concessional rate of tax filing of Form "C" declaration is mandatory. However, the time limit prescribed for filing such declarations is directory and not mandatory and in the case on hand the assessing officer having accepted the Form "C" declarations and considered the same, it is deemed that the assessing officer of IOCL was satisfied that there was sufficient cause which prevented the dealer from filing Form "C" declaration within the time stipulated under the Act and the rules framed thereunder.*

(3) *Having held that the rejection of the Form "C" declarations was erroneous, unsustainable and illegal the assessment order dated 30.06.2020 to the said extent is set aside.*

(4) *The writ petitioner is entitled to the concession rate of tax as they have fulfilled the conditions in Section 8 of the Central Sales Tax Act, 1956 and the Form "C" declarations having been verified and found to be in order by the concerned authority of the State of West Bengal.*

(5) *For the reasons set out above, it is held that the writ petitioners are entitled to claim refund of tax directly from the State of West Bengal and they are not required to make the claim through the selling dealer, IOCL.*

(6) *Refund cannot be denied to the writ petitioners by the State of West Bengal disregarding the fact that excess tax was paid under compelling circumstances namely non-issuance of form "C" declarations.*

(7) *For the reasons set out above, it is held that the writ petitioner can claim refund directly from the appellants/State of West Bengal* *having borne the burden of tax which have been collected from the writ petitioner and deposited by IOCL with the Exchequer of the State of West Bengal.*

(8) *The State of West Bengal/ appellants are unjustified in refusing to refund the excess tax as it had been allowing concessional rate to the writ petitioners before and after the disputed period.*

(9) *The circular issued by the Union of India dated 01.11.2018 is binding on the appellants/State of West Bengal as they being the agent of the Central Government for levy and collection of Central Sales Tax and non-refunding of the excess tax collected is contrary to the instruction dated 01.11.2018."*

2. Following the above decision, the appeal stands dismissed.
3. No costs.
4. Urgent photostat certified copy of this order, if applied for, be furnished to the parties, expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)