29.09.2023
Item Nos.5 & 28
gd/ssd

MAT/1425/2023
IA NO: CAN/1/2023
JAC OLIVE PRODUCTS PRIVATE LTD. AND ANR.
VS
DEPUTY COMMISSIONER OF STATE
TAX BUREAU OF INVESTIGATION
SOUTH BENGAL AND ORS.
with
MAT/1426/2023
IA NO: CAN/1/2023
HAHNEMANNS JAC OLIVOL GROUP
OF PRODUCTS PVT. LTD. AND ANR.
VS
THE DEPUTY COMMISSIONER OF
STATE TAX BUREAU OF
INVESTIGATION S.B. HQ, AND ORS.

MR. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal
..for the State.

1. These intra court appeals are directed against the orders passed by the learned Single Bench dated 17th July, 2023 in WPA 13343 of 2023 and WPA 13349 of 2023.

2. The issue involved in both the writ petitions are identical inasmuch as the assessees are same person and the only difference being the period for which the proceedings have been initiated.

3. The appellants had filed the writ petition challenging the preliminary report which was drawn by the authorities concerned dated 02.06.2023.

4. The challenge to the said report was negated and the learned Single Bench held that the writ petition is premature.

5. We entirely agree with the findings recorded by the learned Single Bench in the said order. This conclusion is also substantiated with additional reasons, namely, after the preliminary report a final report has been drawn on 24.07.2023 and communicated to the appellants/writ petitioners by giving the appellants/writ petitioners an opportunity to file their rebuttal. The undisputed fact is that the rebuttal could not be filed. However, the assessee would explain that there was an application pending before the Special Commissioner and that is the reason for which the appellants/assessees did not file their rebuttal to the preliminary report. As pointed out earlier, the final report has already been drawn and based on that an intimation to show cause was issued in Form GST DRC- 01A.

6. On a perusal of the said Form which is a statutory Form, we find that there is an annexure. The annexure is purported to be an opportunity extended to the assessees to submit their objections. However, the said annexure does not explicitly narrate the

allegations against the appellants/assessees but would rather refer to the final report dated 24.07.2023. The contention of the appellants is that in a show cause notice the authority is not entitled to pre-judge the issue and in support of such contention reliance was placed on the decision of the Hon'ble Supreme Court in *Oryx Fisheries Private Limited v. Union of India* reported in *2011 (266) ELT 422 (SC)*.

7. Though we are of the prima facie view that the annexure along with Form GST DRC- 01A cannot be treated as a show cause notice, it has come on record that subsequently a show cause notice has already been drawn on 23.8.2023. On perusal of the said show cause notice, it cannot be stated that there has been any pre-judging of the matter as the show cause notice takes into account the allegations which were brought about in the final report and thereafter the authority has proceeded to issue the show cause notice.

8. The appellants had also challenged the authority of the Bureau of Investigation, South Bengal Headquarter to issue the show cause notice on the ground that it is not an adjudicating authority.

9. This contention is rebuttal by the learned counsel by contending that the show cause notice has been issued by an officer in the rank of Deputy

Commissioner, State Tax and is entitled to adjudicate a show cause notice.

10. In the light of the subsequent development, we are of the view that the challenge to the preliminary report dated 02.06.2023 has worked itself out inasmuch as subsequently a final report has been drawn on 24.07.2023 and the correctness of the said report also need not be gone into at this juncture since the matter has now travelled to the stage of issuance of the show cause notice dated 23.08.2023.

11. Therefore, we are of the considered view that the appellants should participate in the adjudicating proceedings by filing an appropriate reply to the show cause notice dated 23.08.2023.

12. In reply to the show cause notice, the appellants are entitled to raise all factual and legal issues including the issue that the Bureau of Investigation cannot act or function as an adjudicating authority to adjudicate the show cause notice. If such a plea is raised, the said authority who had issued the show cause notice shall decide the said contention as first amongst the several contentions that may be raised by the appellants in reply to the show cause notice. Since the time limit prescribed for submitting the explanation to the show cause notice has already expired, we extend the time and the appellants shall submit their reply to the show cause notice not later

than 16th October, 2023. Thereafter the authority concerned shall fix a date for personal hearing which can preferably be fixed after the Puja Holidays and after affording an effective opportunity to the authorized representative of the appellants, the said authority shall proceed to take a decision on merits and in accordance with law.

13. In so far as the case in MAT 1425 of 2023 it is submitted by the learned advocate for the appellants that show cause notice is yet to be issued.

14. In the light of the conclusion, we arrive at in respect of MAT 1426 of 2023 is concerned, the authority concerned is directed to issue show cause notice in the case covered in MAT 1425 of 2023 also and we grant reasonable time to the appellants to submit their reply. Since the issues involved are common, both the notices shall be adjudicated jointly on a date fixed by the authority.

15. With the above observations, these appeals are dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)