

22.08.2023

Sl no. 6

Ct no. 2

P.M.

WPA 18684 OF 2023

Tamralipta Co-operative Spinning Mills Ltd.

- Vs -

Union of India & Ors.

Mr. Arijit Chakraborty,
Mr. Soumyojyoti Nandy,
Mr. Gyan Prakash Jha

... for the petitioner

Mr. Bhaskar Prosad Banerjee

... for CGST & CX

Mr. Aryak Dutt,
Ms. Sarda Sha

... for Union of India

Ms. Sayani Roy Chowdhury

.... For respondent No. 5

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned coercive action of recovery by the respondent CGST and Central Excise authority on the basis of alleged demand duty and penalty by adjudication order dated 29th December, 2003 which was held to be not sustainable by the Tribunal by its order dated 14th July, 2006.

It appears from record that though the department had gone into further appeal against the aforesaid order of the Tribunal before this Court having Appeal No. CEXA 2 of 2007 and the appeal was admitted by a Division Bench of this Court by

the order dated 2nd July, 2007 without any stay of the aforesaid order of the Tribunal.

Mr. Banerjee, learned advocate appearing for the respondent was asked to produce any piece of document to show that the aforesaid impugned order of the Tribunal in favour of the petitioner was stayed by this court in CEXA 2 of 2007 which he failed to produce.

Mr. Banerjee submits that since the order of the Tribunal in respect of other assesses against whom appeal was filed before the Division Bench of this court and the order of the Tribunal was set aside by order date 9th September in connection with CEXA 4 of 2007 but he failed to show that in the said appeal petitioner was a party respondent or that in the specific appeal against the assessee petitioner against the very same order of the Tribunal any stay was granted by this Court.

Mr. Chakraborty. Learned advocate appearing for the petitioner submits that two-fold coercive action has been taken by the respondents. Firstly they have attached bank accounts in question of the petitioner and secondly they have recovered about 60 lakhs from the petitioner's account which was not at all justifiable and legal in view of the facts and

circumstances as appears from record which has been discussed hereinabove.

Mr. Chakraborty further submits that during the pendency of this writ petition the respondent authority concerned realizing their mistake of taking coercive action, have withdrawn the orders of attachment of the bank accounts of the petitioner but they have not refunded the aforesaid money which has been recovered from the bank accounts of the petitioner.

Considering the facts and circumstances of this case as appears from record and submission of the parties and in view of discussion made above, this writ petition being WPA No. 18684 of 2023 is disposed of by directing the respondent authority concerned /respondent No. 3 to refund the money which has been collected from the bank accounts in question on the basis of the alleged demand arising out of the adjudication order dated 29th December, 2003, within a period of four weeks from the date of communication of this order.

Petitioner will be entitled to claim any statutory interest, if any, in accordance with law.

This writ petition has been disposed of by consensus of both the parties at the motion stage

without calling for affidavits and by considering the records available.

(Md. Nizamuddin, J.)