06.10.2023
Item No.38
RP/PG
Ct. No.1

WPTT 3 of 2023

Sharp Ferro Alloys Limited & Anr.

The Sale Tax Officer, Durgapur Charge & Ors.

Mrs. Rita Mukherjee
Mr. Abhijat Das
Mr. Anirban Chatterjee
... for the Petitioners
Mr. Anirban Ray, ld. GP
Mr. T.M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... for the State

1. This writ petition filed by the assesses/petitioners are directed against the order dated 7th July, 2023 passed by the West Bengal Taxation Tribunal challenging the orders passed by the revisional authority as well as the appellate authority.

2. It is submitted by the learned advocate for the petitioners that the decision taken by the Appellate Authority was not on merit as the appeal was dismissed on the ground that 15% of the disputed tax has not been pre-deposited, as required under Section 84 of the West Bengal Value Added Tax, 2005 read with Rule 138 of the West Bengal Value Added Tax Rules, 2005. This order was confirmed by the revisional authority.

The petitioners invoked the extra-ordinary jurisdiction of the Tribunal by challenging the order of rejection of the appeal on the ground of non-deposit of 15% of the disputed tax by contending that there is a gross discrepancy in the final assessment order when compared with the draft assessment order where there was only a proposal to disallow Rs.2,27,308/- which was availed as input tax credit by the assessees/petitioners. While passing the final assessment order, the amount on account of disallowance was more than Rs.12,00,000/-. Therefore the assessees /petitioners would contend that the pre-deposit of 15% of the disputed tax should be calculated on disallowance, which was proposed in the draft assessment order and not what was disallowed in the final assessment order as the petitioners had no opportunity to put forth their objections against such disallowance and this will be in clear infraction of the proviso to Rule 57 of the West Bengal Value Added Tax Rules, 2005.

3. It is further submitted by the learned advocate for the assessees/petitioners that pursuant to the order passed by the Tribunal the authority had issued notice on the petitioners but the petitioners did not appear. The time for

appearing before the authority is extended and the authority is directed to issue fresh notice of hearing.

4. In our considered view, these issues need not be gone into in the light of the fact that the petitioners have succeeded before the Tribunal as the Tribunal came to the conclusion that there are several infirmities in the orders passed by the Revisional Authority and the Original Authority also has not considered various contentions raised by the assessees/petitioners. Therefore, the Tribunal thought it fit to set aside the Draft Audit Report and Final Audit Report and directed the first respondent to issue a fresh audit report from the stage of the draft audit report.

5. In our view, the learned Tribunal had rightly relegated the matter back to the stage 1 by directing the concerned authority to draw a fresh audit report from the stage of the draft audit report. Further, we find that the order and direction issued by the Tribunal sufficiently safeguards the interest of the assessees/ petitioners by giving liberty to the assessees/ petitioners to canvas all points as and when the draft audit report/draft assessment order is drawn and served on the petitioners.

6. Therefore, we find no grounds to interfere with the order passed by the Tribunal.

7. It is submitted by the learned advocate for the petitioners that the petitioners while filing the appeal before the Appellate Authority had effected a pre-deposit of Rs.1,62,031/-. She further submits that this amount may be directed to be refunded. In the light of the order passed by the Tribunal remanding back the matter to the first respondent to issue a fresh draft audit report from the stage of the draft audit report, the amount which has been pre-deposited by the petitioners/assessees to the tune of Rs.1,62,031/- shall be adjusted against the future tax liability of the assessees/petitioners.

8. With the above observations, this petition is dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)