24.11.2023
Item No.18
RP
Ct. No.1

MAT 1955 of 2023
+
IA No.CAN 1 of 2023

M/s. Radha Mohan Purshottam Das Agarwal & Anr.
Vs.
The Assistant Commissioner of State Tax, Jorabagan and Jorasanko Charge, Kolkata & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Shaw
.....for the Appellants

Mr. Anirban Ray, GP
Mr. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
..for the State

1. This intra-Court appeal filed by the appellants is directed against the order dated 25th September, 2023 passed in WPA 21076 of 2023 by which the learned Single Bench declined to grant interim order.
2. We have elaborately heard the learned advocates for the parties.
3. Earlier the appellant had approached this Court and filed MAT 151 of 2023 challenging an order passed in WPA 28710 of 2022 dated 3rd January, 2023. The subject matter involved in the said appeal was whether cancellation of VAT registration of the appellant with retrospective effect was valid. The said appeal was allowed by issuing certain

directions. The operative portion of the said order reads as follows.

> " *Thus, considering the peculiar facts and circumstances of the case, we are of the view that the matter should be re-heard by the Original Authority specifically deciding the application filed by the appellants on 15th June, 2017 for restoration of the VAT registration followed by the order dated 07.12.2018.*
>
> *For the above reason, we are inclined to remand the matter back to the Adjudicating authority, who shall afford an opportunity of personal hearing to the authorized representative of the appellants and pass a fresh order on merit and in accordance with law taking note of the observations made in the preceding paragraphs.*
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> *In the result, both the appeal and the connected application stand allowed and the writ petition also stands allowed and the orders impugned in the writ petition passed by the Adjudicating Authority and the Appellate Authority are set aside and the matter stands remanded back to the Adjudicating Authority, who shall afford an opportunity of personal hearing to the appellants or their authorized representative and decide the core issue, namely the application filed by the appellants on 15th June, 2017 for*

restoration of the VAT registration without being influenced by any of the observations made by us hereinabove. The above direction shall be complied with by the Adjudicating Authority within a period of four weeks from the receipt of the server copy of this order.”

4. After the above direction it appears that the authority has rightly construed above observations contained in the said judgment and by order dated 11.05.2023 restored the appellants’ VAT registration with retrospective effect from 5th June, 2017 the date on which it was cancelled. The consequence of such restoration would be that the appellant would be entitled to transitional credit. Unfortunately, the authority without appreciating the legal aspect issued a show cause notice under Section 73(1) of the CGST Act 2017/WBGST Act 2017 dated 3rd July, 2023 alleging that by referring to Section 140 of the WBGST Act, 2017, more particularly, Clause (ii) of Section 140(1) where it states that a registered person shall not be allowed to take credit where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date. The assessee submitted an elaborate reply dated 1st August, 2023 stating out all the facts and submitted that after the VAT registration having been cancelled

with retrospective effect the appellant was compelled to approach this Court and only after the judgment passed in MAT 151 of 2023 the VAT registration was restored with retrospective effect. Therefore, the authority cannot rely upon Section 140(1)(ii) of the WBGST Act, 2017. After receiving the reply the authority has passed the adjudication order under Section 73(9) of the CGST Act 2017/WBGST Act 2017 dated 10th August, 2023, which was the subject matter of challenge in the writ petition. Though the order is a four pages order, the first two pages of the order are verbatim extraction of the show cause notice and the authority has also taken note of the fact that assessee has filed monthly returns under the provisions of the Act. Having noted the same the authority comes to the conclusion that manual submission of statements in the form of returns cannot be accepted as returns. This findings recorded by the authority in its order dated 10th August, 2023 is fully illegal and has been made with wrong understanding of the legal position. In fact, the authority seeks to reopen a settled issue by issuing a show cause notice dated 3rd February, 2023 which they are not entitled to on or after restoration of the VAT registration. The appellant was entitled for transitional credit. Hence, we are of the view that the adjudication order dated

10th August, 2023 is totally without jurisdiction and illegal.

5. Accordingly, the appeal and the connected application and the writ petition are allowed and the orders which are impugned in the writ petition are quashed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)