

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 1009 of 2022

M/s. Gargo Traders

Versus

The Joint Commissioner, Commercial Taxes

(State Tax) & Ors.

Ms. Jagriti Mishra

Mr. Subham Gupta

Ms. Mrinmoyee Das

Mr. Reshab Kumar

.....For the Petitioner.

Mr. Subir Kumar Saha, Ld. A.G.P

Mr. Bikramaditya Ghosh

.....For the State.

Heard on : 07.06.2023

Judgment on : 12.06.2023

Krishna Rao, J.:

1. The petitioner has filed the present writ application challenging the order passed by Joint Commissioner, State Tax, West Bengal, Siliguri Circle dated 13th April, 2022 wherein the appeal preferred by the petitioner is rejected and the order passed by the Adjudicating Authority is withheld.
2. The petitioner being the registered taxable person (RTP) claimed credit of input tax against supply made from a supplier. As per the ledger account of the petitioner for the period from 01.04.2018 to 31.03.2019, the total purchase credit was Rs. 13,04,586/-. The petitioner has filed a tax invoice cum chalan reflecting a purchase of Rs. 11,31,513.00 from Global Bitumen. The debit note issued in the name of the transporter i.e. the International Transport Corporation for an amount of Rs. 1,73,073.00/-. The petitioner has made payment to Global Bitumen from the account of the petitioner through bank.
3. The petitioner is aggrieved by the impugned order issued by the respondent authorities for not allowing the petitioner, who is the purchaser of goods in question and refusing to grant the benefit of Input Tax Credit (ITC) on purchase from supplier and also asking the petitioner to pay penalty and interest under the relevant provisions of GST Act.
4. The case of the respondents that on inquiry, they came to know that the supplier from whom the petitioner claimed to have purchased the goods in question are all fake and non-existing and the bank accounts open by the supplier is on the basis of fake document and the claim of

the petitioner of Input Tax Credit are not supported by any relevant document. It is the further case of the respondent that the petitioner has not verified the genuineness and identity of the supplier whether is a registered taxable person (RTP) before entering into any transaction with the supplier.

5. It is the further case of the respondents that the registration of the supplier in question has already been cancelled with retrospective effect covering the transaction period of the petitioner.
6. The petitioner has filed supplementary affidavit by enclosing tax invoice cum challan dated 12th November, 2018, debit note dated 12th November, 2018, e-Way Bill dated 12th November, 2018, transportation bill dated 12th November, 2018 and statement of bank account of HDFC Bank of the petitioner showing the transaction made by the petitioner in favour of the supplier.
7. Learned Counsel for the petitioner relying upon the said documents and submits that the authorities have not considered the said documents and from the said documents, it is crystal clear that the petitioner has purchased the goods from the supplier and had transported the said goods and also transferred the amount through bank in the account of the supplier.
8. Learned Counsel for the petitioner relied upon unreported judgment passed by the Principal Bench of this Court in **WPA 23512 of 2019 (M/s. LGW Industries Limited & Ors. –vs- Union of India & Ors.)** dated 13th December, 2021 and the Judgment reported in **2023 SCC OnLine Del 1412 (Balaji Exim –vs- Commissioner, CGST & Ors.)**

and submitted that the allegation of fake credit availed by Global Bitumen cannot be a ground for rejecting the petitioner's refund application unless it is established that the petitioner has not received the goods or paid for them.

- 9.** *Per contra*, Learned Counsel for the respondents submits that the transaction relied by the petitioner with Global Bitumen is of November, 2018 but the authorities have cancelled the registration of the supplier of the petitioner with effect from 13.10.2018 and the said cancellation has been accepted by the supplier.
- 10.** Learned Counsel for the respondents submits that the judgments relied by the petitioner is distinguishable from the present case as in the present case, the cancellation of the supplier has been given retrospective effect and the supplier has accepted the same and thus the judgment relied by the petitioner is not applicable in the present case.
- 11.** Considered the submissions made by the Counsels for the respective parties, perused the materials on record and the judgment relied by the petitioner.
- 12.** The main contention of the petitioner that the transactions in question are genuine and valid and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

13. Admittedly at the time of transaction, the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash.
14. It is not the case of the respondents that there is a collusion between the petitioner and supplier with regard to the transaction.
15. This Court finds that without proper verification, it cannot be said that there was any failure on the part of the petitioner in compliance of any obligation required under the statute before entering into the transactions in question.
16. The respondent authorities only taking into consideration of the cancellation of registration of the supplier with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.
17. The unreported judgment passed in the case of ***M/s Law Industries Limited & Ors. (supra)*** is squarely applicable in the present case.
18. In view of the above, the impugned orders are set aside. The respondent no. 1 is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim.
19. The respondent no. 1 shall dispose of the claim of the petitioner by passing a reasoned and speaking order after giving an opportunity

of hearing to the petitioner within a period of eight weeks from the date of receipt of copy of this order.

20. WPA No. 1009 of 2022 is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)