Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

43 21.09.2023
Ct. no. 2
S.Bag

WPA/1906/2023

ABINASH RAI
VS
THE ASSISTANT COMMISSIONER
OF WEST BENGAL STATE TAX,
COOCH BEHAR CHARGE AND ORS.

Mr. Ankit Kanodia
Ms. M. Agarwal
Mr. A. Mittal

...for the petitioner

Mr. Subir Kr. Saha
Mr. Pretom Das

...for the State

The petition is directed against an order dated 23 May, 2023 passed under Section 107 of the West Bengal Goods and Services Tax Act, 2017 read with the rules framed thereunder.

Briefly, the petitioner is running a business under the name Abinash Rai, Super Market at Jaigaon, Alipurduar, Jalpaiguri, West Bengal 736182.

The appellant had filed an application for refund of unutilized Input Tax Credit (ITC) on account of zero rated supply without payment of tax under section 54(3) of the Act. Pursuant to the aforesaid, a show cause notice was issued to the petitioner for not allowing the entire refund amount claimed on diverse grounds. The appellant duly replied to the said notice. Thereafter by an order dated 29 July, 2022, the Adjudicating Authority being unsatisfied with the reply provided by the petitioner rejected the entire claim for refund.

Being aggrieved by the order dated 29 July, 2022, the appellant filed a statutory appeal which was disposed of by an order dated 23 May, 2023.

On behalf of the petitioner, it is submitted that in passing the impugned order, the Appellate Authority erred in law inasmuch as it deducted credit for an amount aggregating to Rs.476626/- in respect of output tax pertaining to invoice No. EXP/2021-22/005. This was impermissible in law. It is submitted on behalf of the petitioner that in clubbing invoice No. EXP/2021-22/005 in an application seeking refund by the petitioner, the Appellate Authority has acted unreasonably and without authority of law.

It is submitted that there is no provision under the Act whereby whilst entertaining an application for refund, the authority could reject a particular claim by the appellant and thereafter club and recover the same from the petitioner.

In any event, it is submitted that save and except the aforesaid amount of Rs.4,76,626/- the order dated 29 July, 2022 was modified by allowing the petitioner to obtain refund for the balance amount of Rs.6,87,121/-. To this extent, the impugned order was modified by the Appellate Authorities.

It is submitted on behalf of the petitioner that pursuant to the passing of the impugned order, the petitioner has subsequently paid an aggregate amount of Rs.4,76,626/- on 5 August, 2023. This would also be evident from the writ petition.

Admittedly the refund claim was for an aggregate amount of Rs.10,09,000/-. The refund has been allowed only for Rs.6,86,121/-. There has also been deduction on account of an invoice being no. EXP/2021-22/005 for Rs.4,76,626/-.

In such view of the matter the Appellate Authority in clubbing the refund claim of the petitioner with the invoice no. EXP/2021-22/005 dated 28 February, 2022 and in passing the impugned order has acted contrary to law. The clubbing or taking into account of this particular bill was without authority of law. Even if a portion of the claim was rejected, the simultaneous recovery was impermissible.

In such circumstances, the portion of the order whereby Output Tax Invoice no. EXP/2021-

22/005 for Rs.4,67,626/- has been denied and simultaneously recovered and/or adjusted is set aside.

The matter is remanded back to the Appellate Authority to consider the claim only in respect of the aforesaid amount of Rs.4,76,626/- in accordance with law and positively within a period of eight weeks from the date of communication of this order. The remaining portion of the impugned order is not interfered with. It is also expected that the respondent authorities shall take expeditious steps for payment of the admitted refundable amount in accordance with law.

It is needless to mention that in deciding the issue being remanded to the Appellate Authority, the Appellate Authority will not be influenced by any observation on the merits of the case. The Appellate Authority is at liberty to decide the issue in accordance with law and positively within the aforementioned stipulated period of time.

With the aforesaid directions, WPO No.1906 of 2023 stands allowed.

Affidavit of Service filed in Court be kept with the records.

(Ravi Krishan Kapur, J.)