HIGH COURT AT CALCUTTA
In The Circuit Bench At Jalpaiguri
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

WPA 2117 of 2023

A.C. Banerjee & Sons.
Versus
State of West Bengal & Ors.

For the Petitioners : Mr. Dhiraj Lakhotia,
Mr. Radhika Agarwal,
Ms. Meghana Joshi
...Advocates

For the State : Mr. Pretom Das
...Advocate

Heard on : 11.10.2023

Judgment on : 17.10.2023

AJAY KUMAR GUPTA, J.:

1. The writ petitioners have assailed the order dated 20th April, 2023 passed by the 1st Appellate Authority under Section 107 of the West Bengal Goods and Services Tax, 2017 before this Court as the Tribunal has not been constituted in the West Bengal. The writ petitioners seeking directions commanding the respondents herein to forthwith recall, cancel and/or rescind the purported order passed by the respondent no. 2 dated 17.11.2022, annexed herewith and marked as Annexure P/8 with regard to discrepancies found during scrutiny of returns under Section 61 of the CGST Act, 2017 and WBGST Act, 2017 for the period 01.07.2017 to 31.03.2018 and the purported order passed by the respondent no. 3 dated 20.04.2023 being 1st Appellate Authority, thereby not interfered with the order directed to pay interest in terms of Section 50(1) of the WBGST/CGST ACT, 2017 by the Adjudicating Officer and rejected the Memorandum of Appeal with certain observations marked as Annexure P/9.

2. It is submitted by Ld. Advocate appearing on behalf of the petitioners that actually the petitioners' accountant made an inadvertent error while filing return for the month of November, 2017. Return was filed belatedly on 01.09.2018, the value of total GST Output Tax as well as total GST Input Tax was incorrectly reduced by Rs. 51,60,788/-.

3. It is further submitted that due to this mistake there was no loss to the revenue as there was no tax which remained unpaid. The said mistake was detected and rectified and filed the GSTR 3B for the month of April, 2018 on 20.10.2018 by increasing the Output Tax as well as GST Input Tax by 51,60,788/-.

4. It is further submitted that on 29.01.2020 the petitioners filed return in Form 9 as well as the reconciliation statement in Form 9C for the financial year 2017-2018, wherein the petitioners had explained the inadvertent mistake occurred at the time of filing GSTR 3B for the month of November, 2017. As a result of which the petitioners' claim Input Tax as well as Output Tax was reduced by 51,60,788/-. But in spite of such fact, certain discrepancies were found during scrutiny of returns under Section 61 of the CGST Act, 2017, which was communicated to the petitioners along with Form GST AMT 10 under Rule 99 of the CGST Rules, 2017 wherein it was, inter alia, alleged that the petitioners had paid short tax on outward supply of Rs. 51,60,788/- towards CGST & WBGST and therefore the petitioners are liable to pay applicable interest to the tune of Rs. 3,92,258/- though the mistake was informed prior to the date of scrutiny to the authorities about the clerical mistake in return of 2017-2018. So they are not liable to pay interest.

5. The authority issued a show cause notice under Section 73(1), CGST Act, 2017 asking the petitioners to pay interest under Section 50 of the CGST Act, 2017 to the tune of Rs 3,92,258/- on delayed payment of Output Tax @ 18% p.a. and thereafter issued final order dated 17.11.2022 directing the petitioners to pay interest @ 18% p.a. on the total amount of less payment of taxes under the Act, which has been paid with return in GSTR-3B of April, 2018. Total actual interest liability to the tune of Rs. 3,92,258/- in total towards CGST and WBGST has been claimed by the authorities though petitioners had given a reply on 02.07.2022 stating therein that they had filed their return with excess Output Tax as well as Input Tax of Rs. 51, 60,788/- so as to adjust the previous mistake.

6. Against that said impugned order, the petitioners had filed an appeal before the Appellate Authority challenging the order passed under Section 73 of CGST Act, 2017. However, the Appellate Authority rejected the Memorandum of Appeal on 20.04.2023 overlooking the provision and bonafide mistake.

7. It is further submitted that it is admitted fact that the respondent no. 3 had accepted the fact that the total ITC claim by the petitioners in the Form GSTR 3B for the financial year was 11,00,611.96/-. However, as per the auto-populated GSTR 2A of the said financial year the Input Tax was Rs. 63, 38,350/- which means the petitioners had claimed less ITC by Rs. 52, 37,739/- in the financial year 2017-2018. The said amount was lying in the electronic ledger account with the Government. Petitioners had adjusted the balance tax liabilities by debiting the electronic credit ledger. So, question of payment of interest on delay payment of Output Tax does not arise. It was overlooked by the Appellate Authority and mechanically rejected the said appeal.

8. It is further submitted that as per the amendment of Section 50(1) proviso provides that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

9. The said amendment was in consequence of minutes of 31st meeting of the GST Council held on 22nd December, 2018, wherein the council has agreed that Section 50(3) of the CGST Act shall be amended so as to provide that interest would be leviable only “on the amount payable through the electronic cash ledger” of the taxpayer. Petitioners had already more Input Tax Credit in its electronic ledger account with the Government. Learned advocate further referred several judgments to support his aforesaid contention that the authority cannot charge interest on the amount after the amendment of Section 50 of the CGST Act on payment adjusted by electronic ledger account. These judgments are as folllws:

i. M/s. Utkal Automobiles Pvt. Ltd. Vs. The Union of India & Ors. [W.P. (C) No. 10277 of 2020],

ii. M/s Sumilon Polyster Limited vs. Union of India [R/Special Civil Application No. 18198 of 2019 **with** R/Special Civil Application No. 4025 of 2020 **with** R/Special Civil Application No. 4487 of 2020 **with** R/Special Civil Application No. 5146 of 2020 **with** R/Special Civil Application No. 5247 of 2020 **with** Civil Application (For Stay) No. 1 of 2020 **in** R/Special Civil Application No. 5247 of 2020 **with** R/Special Civil Application No. 5263 of 2020 **with** Civil Application (For Stay) No. 1 of 2020 **in** R/Special Civil Application No. 5263 of 2020 **with** R/Special Civil Application No. 5266 of 2020 **with** Civil Application (For Stay) No. 1 of 2020 **in** R/Special Civil Application No. 5266 of 2020 **with** R/Special Civil Application No. 5276 of 2020 **with** Civil Application (For Stay) No. 1 of 2020 **in** R/Special Civil Application No. 5276 of 2020 **with** R/Special Civil Application No. 5788 of

2020 **with** R/Special Civil Application No. 5785 of 2020 **with** R/Special Civil Application No. 5879 of 2020 **with** R/Special Civil Application No. 5902 of 2020 with R/Special Civil Application No. 5903 of 2020],

iii. Abis Export India Private Limited through its Director Dr. Anjum Alvi, S/o Late Dr. Iqbal Alvi, Aged About 55 Years, R/o Ward No. 19, Anupam nagar, Rajnanadgaon, P.S. Basant, Post Rajnandgaon (C.G.) Vs. State of Chhattisgarh, through Secretary, Department of State Tax, Mantralaya, Mahanandi Bhawan, Atal Nagar, Raipur, District- Raipur (C.G.) & Ors. [WPT No. 100 of 2019).

10. On the other hand, the learned counsel appearing on behalf of the respondents submitted that interest has been charged for delay in payment of Output Tax. Furthermore, the return was not declared within the prescribed time. Therefore, the writ petition has no merit and required to be dismissed.

11. Heard the submission advanced by the parties and on perusal of the materials available on record as well as Judgment referred by the petitioners, it appears that the petitioners have placed before this Court the fact about the clerical mistake. It was bonafide because the petitioners had informed the authority after rectification of the same in the month of April 2018 i.e. date prior to the scrutiny made on 17.06.2018. The petitioners also filed the return prior to the date of scrutiny for the financial year 2017-2018 with excess Output Tax as well as Input Tax of Rs. 51,60,788/- so as to adjust the previous mistake and in his reply, he specifically contended that there was a bona fide mistake. Apart from that, the Input Tax Credit was available more with the Government in his electronic ledger account as submitted by Ld. Advocate for the petitioners.

12. Provision inserted in sub-Section 50(1) of the WBGST Act, 2017 clearly provides that the interest would be levied only on that part of the tax which is paid in cash, the assessing authority should not have been acted arbitrary in exercise of power to issue Notice.

13. For better comprehension, proviso to sub-Section (1) of Section 50 as inserted with effect from 01.08.2019 in consequence of minutes of 31st meeting of the GST Council held on 22nd December, 2018 is extracted hereunder:

> *"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."*

It is further submitted by Mr. Lakhotia Advocate assisted by Mr. Radhika Agarwal and Ms. Meghana Joshi, Advocate that the said proviso suffered "substitution" by virtue of the Finance Act, 2021 [Act No. 13 of 2021] which would remove all the ambiguity. For benefit Section 112 of the Finance Act, 2021 relating to amendment of the Central Goods and Services Tax Act, 2017, is extracted hereunder:

> ***"In Section 50 of the Central Goods and Services Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely, :-***
>
> > *'Provided that the interest on tax payable in respect of supplies made during the tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.'"*

[Emphasis supplied]

It is, therefore, submitted by the learned counsel for the petitioners that at any rate in view of substitution of proviso to sub-section (1) of Section 50 of the CGST Act, 2017, with retrospective effect from 01.07.2017 by virtue of the Finance Act, 2021, the Demand Notice dated 17.11.2022 cannot have legs to stand and liable to be set aside.

14. In view of the discussion made above by this Court and conceded situation of the aforesaid proviso, it would be appropriate to set aside the notice dated 17.11.2022 as well as impugned order dated 20.04.2023 passed by 1st Appellate Authority and remand the matter to the Assistant Commissioner of Revenue (WBGST), Commercial Taxes, WB, Siliguri Circle for reconsideration of the matter afresh taking into consideration of amendment carried out by virtue of the Finance Act, 2021 and also issue raised by the petitioners with regard to bona fide and inadvertent mistake committed by the petitioners' accountant and subsequently rectified after detection and brought to knowledge of the Authority in accordance with law.

15. It is made clear that whatever observation made in this judgment shall not stand in the way to reconsider the matter on its own merits in accordance with law.

16. With these observations, the writ application being No. **WPA 2117 of 2023** is disposed of.

17. There shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

19. All parties shall act on server copy of this order downloaded from the official website of this Court.

(Ajay Kumar Gupta, J.)

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