Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

2 13.09.2023
spal Ct. no. 2

WPA/2125/2023

ANANDAMOY BHATTACHERJEE
VS
THE STATE OF WEST BENGAL
AND ORS.

Mr. Himangshu Kumar Ray
Mr. Abhilash Mittal
...For the petitioner.

Mr. Subir Kumar Saha
Mr. Pretom Das
...For the State

The question which arises for consideration is whether the petitioner is liable to pay GST in respect of the contracts which were awarded in both the pre-GST regime or the post-GST regime.

The admitted facts of the case are that the petitioner is registered under the GST Act *w.e.f.* 1 July, 2017. During the period 2017-18 the petitioner has executed several work orders for the State Government. The petitioner is a Government contractor and has been executing such contracts both prior to the GST regime and post thereto.

By a letter dated 11 July, 2023, the respondent authorities have noted the discrepancies in the payments received by the petitioner and the dues payable under the West Bengal GST Act and Rules, 2017.

It is submitted on behalf of the petitioner that in view of the discrepancy between the works rendered both under the pre GST regime and the post GST regime, the petitioner is not obliged to make any payment. Any payment should be made by the State authorities who are the ultimate recipients of the contract.

The petitioner also relies on an unreported decision dated 4 September, 2023 passed by a Co-ordinate Bench in WPA/20774/2023 (*Rasedul Haque vs. The State of West Bengal & Ors.*).

It is submitted on behalf of the respondent authorities that in terms of the Act the petitioner is entitled to raise all their grievances before the Appropriate Forum, i.e., the Proper Officer under the Act. It is also submitted that the Notification dated 16 August, 2017 deals with all the grievances of the petitioner.

Sections 73(5), 73(9) and 73(10) of the West Bengal GST Act and Rules, 2017 provide as follows:

"73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

It appears from the notices issued by the respondent authorities that the respondent authorities have found the petitioner to have a turnover/outward supplies aggregating to Rs.174.53 lakhs which has been reiterated in the notice dated 11 July, 2023. However, the petitioner has not been able to reflect the correct financial position and there is mismatch in respect of the figures which have been relied on by the petitioner.

The letter dated 18 August, 2023 issued by the petitioner states that they are yet to receive any amount on account of GST from the State. The figure of Rs.99,40,333/- is also reiterated in the Statement of Payments and the payment certificate relied on by the petitioner. The entire exercise of calculation as to what amount has been received in respect of the contracts pre GST regime and post GST regime would be most suitably be adjudicated upon by the Proper Officer. This is the clear mandate of the section and there is no scope of rewriting the same. The notification dated 16 August, 2017 to this effect also clarifies the situation and provides guidance. The notification covers both pre GST contracts and post GST contracts. In any event, it is always open to the petitioner to raise all such issues before the Proper Officer.

The unreported decision in *Rasedul Haque (supra)* is distinguishable and inapposite to the facts of this case. In view of the clear mandate of the section and the provisions of the Act, there is no question of remanding the matter to the Additional Chief Secretary, Finance Department or any other person save and except the Proper Officer.

In such circumstances, there is no scope of interference in this proceeding.

WPA/2125/2023 stands dismissed by granting liberty to the petitioner to appear before the Proper Officer in terms of the impugned notice dated 11 July, 2023 and take all available points in accordance with law.

With the aforesaid directions, WPA/2125/2023 stands disposed of.

(Ravi Krishan Kapur, J.)