IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

10 15.09.2023
Ct. No. 2
D.Ghosh

WPA/2127/2023

DIPAK SARKAR
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. Himangshu Kr. Ray,
Mr. Abhilsh Mittal,
..for the petitioner

Mr. Subir Kr. Saha,
Mr. Pretom Das,
..for State

The writ petition is directed against an appellate order passed under Section 107 of the West Bengal Goods and Service Tax Act, 2017.

Briefly, the petitioner is a contractor executing works for the State Government. The grievance of the petitioner is that the Notification dated 16th August, 2017 does not deal with payments made in the post GST regime in respect of contracts or outgoing projects where estimates had been approved before 1st July, 2017, i.e., those work orders which were given prior to GST regime but have been executed after GST regime. The petitioner also complains of the violation of the principles of natural justice and submits that no opportunity of hearing was given to the petitioner.

On these grounds, the petitioner assails the impugned order.

On behalf of the respondent authorities, it is submitted that it would be evident from the impugned order that the subject agreement was executed on 20th August, 2018 by the Superintending Engineer P.W.D. North Bengal Construction Circle No.1, Bhola Ashram, Cooch Behar and the completion certificate was also issued on 8th July, 2023. As such, there is no question of the pre GST regime being applicable and the contract has been granted and executed after the introduction of the Act. In such circumstances, there is no ambiguity nor clarification necessary. It is also submitted on behalf of the authorities that the petitioner had been given an adequate opportunity and had failed to support the claim of non-applicability of the GST amount of Rs.1,90,67,822/- received on account of works contract granted and executed after the post GST regime. Thus, there has been willful mis-statement by the petitioners and appropriate proceedings had been initiated under Section 74 of the Act which have culminated in the impugned order being passed.

The impugned order is well reasoned and categorically records that the petitioner has received the entire payment against execution of work contracts in the post GST regime. Hence, the petitioner was obliged to pay GST on such payment and the same ought to have been made after filing the proper form. The plea of the appellant that the tax has not been paid by the Department, is also not tenable in law and non-payment of GST by the petitioner is in contravention of the provision of the Act. In any event, all these aspects have been considered in the impugned order.

The impugned order contains reasons and has been passed after affording the petitioner an opportunity. All the points of the petitioner have been duly dealt with and considered in the impugned order. There are no other grounds urged warranting any interference with the impugned order. There is no illegality nor perversity nor error of law in the impugned order.

In such circumstances, WPA/2127/2023 stands dismissed.

However, there shall be no order as to costs.

(Ravi Krishan Kapur, J)