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ORDER SHEET
WPO/1659/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S J S INDIA PVT LTD AND ANR
VS
ASSISTANT COMMISSIONER OF STATE TAX BOWBAZAR CHARGE AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 22nd November, 2023

Appearance:
Mr. Shobhantanu Bhattacharyya, Adv.
Mr. Sagarmay Ghosh, Adv.
...For the Petitioner

Mr. Somnath Ganguli, AGP.
Ms. Priyamvada Singh, Adv.
...For the State Respondents

The Court : Heard learned advocates appearing for the parties.

The main issue involved in this writ petition is whether on the ground of cancellation of the registration of petitioners' supplier with retrospective effect covering the period of transaction by the petitioner, petitioner can be denied the benefit of ITC. The case of the petitioner is that at the relevant point of time when the petitioner entered into transaction with the supplier it has taken all steps to verify the existence of its supplier and observed all other legal obligation and at the relevant point of time when petitioner entered into transaction its supplier was very much in existence and as such petitioner cannot be denied the benefit of ITC in such cases. In support of its contention petitioner relies on two reported decisions in the case of LGW Industries Limited & Ors. vs. Union of India & Ors. reported in MANU/WB/0923/2021 and in the case of Sanchita Kundu vs. Assistant Commissioner of State Tax, Bureau of Investigation, South

Bengal reported in 2022 (63) G.S.T.L. 413 (Cal.) and particularly on paragraphs 6, 7 & 8 of the judgment in the case of Sanchita Kundu (supra) which are quoted as hereunder :

"6. Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by setting aside the aforesaid impugned orders and remanding these cases of the petitioners to the respondents officer concerned to consider afresh on the issue of their entitlement of benefit of Input Tax Credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of the transactions in question and the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

7. If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration as to whether facts of the petitioners are similar to the judgments of the Supreme Court and various High Courts and of this Court upon which petitioners intend to rely and if it is found similar to the present case in that event the petitioners shall be given the benefit of Input Tax Credit in question.

8. These cases of the petitioner shall be disposed of by the respondents concerned in accordance with and in the light of observation made above and by passing a reasoned and speaking order after giving effective opportunity of hearing to the petitioners, within eight weeks from the date of communication of this order."

Petitioner further submits that the aforesaid impugned adjudication order and the order of the Appellate Authority is not sustainable in law in view of the law settled by this Court in the aforesaid two decisions.

Considering the facts and circumstances of the case and submission of the parties, this writ petition being WPO 1659 of 2023 is disposed of by directing the respondent Authority concerned to decide as to whether petitioner is entitled to get the benefit of Input Tax Credit in question by following the guidelines laid down by this Court in the case of Sanchita Kundu (supra) and if it is found that the case of the petitioner is similar to the aforesaid reported case, subsequent benefit be given, within a period of eight weeks from the date of communication of this order.

(MD. NIZAMUDDIN, J.)

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