**06.02.2024**
**Item No.10**
**RP**
**Ct. No.1**

**MAT 115 of 2024**
**+**
**IA NO.CAN 1 of 2024**

**The Royal Calcutta Golf Club**
**Vs.**
**Principal Commissioner of CGST & CX, Kolkata South CGST & CX Commissionerate & Ors.**

Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala
Mr. Chhandak Chakraborty
Ms. Sretapa Sinha
..... for the Appellant
Mr. K.K. Maity
Mr. Tapan Bhanja
..... for CGST Authority
Mr. Tilak Mitra
Mr. Amit Sharma
..... for UOI

1. This intra-Court appeal is directed against the order dated 2nd January, 2024 passed in WPA 12411 of 2021. By the said order the writ petition filed by the appellant challenging a show cause notice dated 16th July, 2021 on an application for refund of duty was dismissed with a direction to the appellant to submit a reply to the show cause notice. Admittedly, the writ petition was entertained/admitted by the learned writ Court and affidavit-in-opposition was directed to be filed by the Department. The respondent/department has also filed its affidavit-in-opposition and the matter was pending. Thus, admitting the writ petition and setting down the writ petition for hearing would prima facie show that the Court was convinced that there was arguable points raised by the appellant/Department. We are informed that similar issues were also pending in other writ petitions filed by other clubs in WPA 12028 of 2022,

WPA 14482 of 2022, WPA 14485 of 2022, WPA 14487 of 2022 and WPA 14490 of 2022 and there are other writ petitions also said to be pending, the case numbers of which are not known to the appellant. Since the legal issue is pending adjudication before this Court in other writ petitions as well having been admitted and affidavit-in-opposition have been filed and the writ petitions should be adjudicated and decided on merits.

2. Learned Advocate for the appellant would submit that in the writ petition the appellant had challenged the show cause notice on the ground that it is barred by time apart from stating that the theory of unjust enrichment would apply.

3. Learned senior standing counsel appearing for the respondent would submit that in terms of Section 11(B) of the Central Excise Act, 1944 the period of limitation is applicable for refund claims and, therefore, the authority had issued the show cause notice and the authority should be permitted to adjudicate the show cause notice. In support of his contention the learned senior standing counsel places reliance on the decision passed in the cases of Collector of C.E., Chandigarh vs. Doaba Cooperative Sugar Mills reported in 1988(37) E.L.T. 478 (S.C.) and Samsera Engineering Ltd. vs. Deputy Commissioner, Large Tax Payer Unit, Bengaluru reported in 2022(382) E.L.T. 721 (S.C.). He would also contend that there are other decisions which the Department places reliance upon with regard to the plea of unjust enrichment.

4. In our considered view since the writ petition is pending before this Court from the year 2021 onwards and affidavit-in-opposition was directed to be filed, which has been filed by the Department, the matter should be decided on merits by the

learned writ Court instead of relegating the matter to the Adjudicating Authority by filing reply to the show cause notice. We are convinced to take such a stand since legal issues, which have been raised by the appellant/writ petitioner, is also pending consideration before the learned Single Bench as also in other writ petitions filed by similarly placed organizations.

5. For the above reasons, we are inclined to restore the writ petition to the file of the learned Single Bench to be heard and decided along with the analogous cases. In the result, the appeal and the connected application are allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Single Bench. It is made clear that the appellant as well as the respondent department is entitled to canvass all factual and legal issues in the pending writ petition.

**(T. S. SIVAGNANAM)**
**CHIEF JUSTICE**

**(SUPRATIM BHATTACHARYA, J.)**