07.05.2024
Item No.19
Court No.5
Saswata

W.P.A. 9498 of 2024

M/s Softrose Petrochemicals Private Limited & Anr.
Versus
The Assistant Commissioner of State Tax, Posta bazar and Burtola Charge & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah
…For the petitioners
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
…For the State

1. Affidavit of service filed in Court today is retained with the record.
2. The petitioners are aggrieved by the order passed under Section 73 of the WBGST Act 2017[1] dated 1`5th March 2024.
3. The petitioners claim that during the financial year 2018-19 the petitioners had imported certain goods under cover of bill of entries from ONGC Petro Additions Limited, which is a Special Economic Zone Unit. Although, ordinarily the petitioners are not required to make payment of CGST/WBGST with regard to any transaction carried out with any unit under the Special Economic Zone, the petitioners are required to make payment of IGST, the proper officer had, however, by overlooking such fact, issued a pre show cause notice dated 29th September 2023.
4. Mr. Kanodia, learned advocate appearing for the petitioners by drawing attention of this Court to the petitioners' response dated 14th October 2023 which had

[1] Hereinafter referred to as the "said Act"

been uploaded in the common portal on 22nd December 2023, submits that the petitioners had duly clarified the factum of payment of IGST in respect of the goods which had been imported by the petitioners under the cover of bill of entries, from ONGC Petro Additions Limited and had accordingly, submitted that the petitioners were not liable to make payment of CGST and SGST.

5. According to Mr. Kanodia, despite the fact that the proper officer was obliged to take note of the press release issued by the Ministry of Finance dated 29th August 2020, a copy whereof has been made over to this Court, the proper officer by ignoring the same has purported to pass the order under Section 73 of the said Act, thereby holding the petitioners liable to make payment of IGST to the tune of Rs.2,11,44,322/- for which the petitioners had already taken credit. According to him the petitioners had rightly taken credit of the IGST. Mr. Kanodia submits that the order passed by the proper officer cannot be sustained on the ground of non consideration of the aforesaid issue.

6. Mr. Chakraborty, learned advocate appearing for the respondents, on the other hand, submits that the aforesaid issue requires further consideration by the proper officer. He submits that if the matter is remanded back to the proper officer then the proper officer can reconsider the aforesaid issue in light of the disclosure made by the petitioners, in Court today.

7. By drawing attention of this Court to the response given by the petitioners which had been uploaded in the common portal of the respondents on 22nd December

2023, it is submitted that the entire problem had cropped up by reasons of the mistake committed by the petitioners which had been acknowledged in the said communication.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. Taking note of the fact that the petitioners during the financial year 2018-19 had imported goods under cover of bill of entries from ONGC Petro Additions Limited which is a Special Economic Zone Unit for which the petitioners had already taken credit of the IGST, which had incidentally not been considered by the proper officer and on the basis of the submissions made by the learned advocate appearing for the respondents, I am of the view that the matter requires to be remanded back to the proper officer for re-adjudication.

10. Having regard to the aforesaid, the order dated 15th March 2024 passed under Section 73 of the said Act is set aside.

11. I, however, make it clear that I have not gone into the merits of the case.

12. It shall be open to the proper officer to bring the show cause notice dated 27th December 2023 to its logical conclusion upon giving an opportunity of personal hearing to the petitioners by passing a reasoned order, in terms of Section 75(4) of the said Act, within a period of 6 weeks from date.

13. With the above directions and observations, the writ petition being WPA 9498 of 2024 is accordingly disposed of.

14. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

15. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)