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13.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10162 of 2024

M/s. Haldia Nirman Project Private Limited & Anr.
Versus
The Additional Commissioner of CGST & CX, Haldia Commissionerate & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
... For the petitioners.

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
... For the CGST & EX

Mr. Om Narayan Rai
... For Union of India

1. The present writ petition has been filed, inter alia, challenging the order dated 31st January, 2024 passed under Section 74 of the Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the “said Act”).

2. The primary challenge in the writ petition is with regard to initiation of a proceeding by the Central Goods and Services Tax authorities by invoking the extended period as provided for under Section 74(1) read with sub-section (10) by issuing a show cause notice dated 2nd August, 2023 in respect of alleged violation for the financial year 2017-18 to 2021-22.

3. Mr. Kanodia, learned advocate representing the petitioners by drawing attention of this Court to the show cause notice dated 2nd August, 2023, submits that the said show cause notice has been issued beyond the ordinary period of limitation. According to him, certain bald statements have been made at paragraph 4 of the said show cause notice so as to invoke the extended period as provided for in the said Act. Although, the petitioners had duly responded to the said show cause notice by filing a reply dated 17th November, 2023 and had questioned the jurisdiction and authority of the proper officer to initiate proceeding under Section 74 of the said Act beyond the extended period, the proper officer, however, by an order dated 31st January, 2024, by glossing over the same had determined liability of the petitioners by confirming the amount of Rs.3,09,64,252/- as due and payable by the petitioners on account of GST. It is submitted that since, no case for invocation of the extended period has been made out. The proper officer had no jurisdiction to issue show cause notice as the show cause notice was issued beyond the period of limitation ordinarily provided for under Section 73(1) read with Section 73(10) of the said Act. In support of his contention, he has placed reliance on a judgment delivered by the Hon'ble Division Bench of this Court in the case of **Commissioner of Service Tax vs. Naresh**

Kumar & Company Pvt. Ltd., reported **in 2022 (67) G.S.T.L. 324 (Cal.)** In the facts noted above, he submits that not only the order dated 31st January, 2024 but the show cause notice dated 2nd August, 2023 should be quashed and/or set aside.

4. Mr. Bhanja, learned advocate representing the respondent nos. 1, 2 and 3 on the other hand submits that the order dated 31st January, 2024 is an appealable order within the meaning of Section 107 of the said Act. By referring to the show cause notice he submits that in paragraph 4 thereof, the proper officer had categorically spelt out the reasons why the extended period had been invoked. The petitioners had duly responded to such show cause notice and had participated in the proceeding. The points raised by the petitioners in reply to the show cause were duly considered by the proper officer and ultimately the final order under Section 74(9) of the said Act had been passed. The legality and validity of the final order cannot be called in question by invoking the extra-ordinary writ jurisdiction of this Court. He submits that the judgment delivered in the case **of Naresh Kumar & Company Pvt. Ltd**. (supra) does not assist the petitioners as the same is factually distinguishable. By placing reliance on an unreported judgment delivered by Hon'ble Division Bench of this Court on 8th December, 2023, in the case of **M/s. Central Arya Road Transport & Anr. vs.**

Union of India in FMA 890 of 2023 it is submitted that the Division Bench had clarified when the extended period can be invoked. Although in the said judgment a finding has been returned that the extended period cannot be invoked in the absence of factual finding and there should be clear allegations of wilful misstatement or suppression of fact or fraud or collusion committed by the assessee, however according to him, since the show cause notice clearly spells out the reasons for invocation of extended period, this Court ought not to entertain the writ petition.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it is noticed that the proper officer while issuing the show cause notice had invoked the extended period by issuing the show cause notice under Section 74 of the said Act. The show cause notice had been issued on 2nd August, 2023 in respect of the financial year 2017-2018, though, as per the provisions of Section 73 of the said Act, the ordinary period of limitation is only three years from the due date of filing the return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized for any reason other than reasons of fraud, misstatement or suppression of fact to evade tax. In this case the extended period has been invoked. It may, however, be noticed that in paragraph 4 of the show cause notice although, reasons

have been provided for invocation of the extended period, the foundation thereof, has been clearly identified in paragraph 2.14 of the aforesaid show cause notice. The petitioners had duly responded to the show cause and had taken the point of jurisdiction.

6. I have carefully considered the order passed by the proper officer dated 31st January, 2024. In paragraph 4.12 of the said order at page 252 of the writ petition a justification has been provided as regards invocation of the extended period. As to whether or not the proper officer had appropriately considered the petitioners' response on the issue of invocation of the extended period, in my view cannot form subject matter of enquiry in a writ petition and cannot be questioned by the petitioners by invoking extra-ordinary writ jurisdiction of this Court. it is true, that the Hon'ble Division Bench of this Court in the case of **Naresh Kumar & Company Pvt. Ltd**. (supra) **and M/s Central Arya Road Transport & Anr**. (supra) has clearly held that the extended period of limitation cannot be invoked in absence of factual finding and there should be clear allegations of wilful misstatement or suppression of fact or fraud or collusion committed by the assessee.

7. In this case, I notice that in the show cause notice in paragraph 2.14 read with paragraph 4, appearing at page 90 of the writ petition as also in the order dated 31st

January, 2024 the authorities have clearly spelt out in no uncertain terms the basis for invocation of the extended period, which includes suppression of fraudulent availment of input tax credit by way of willful misstatement. I am afraid, the correctness of the aforesaid findings and the sufficiency/proof of such allegations cannot be called in question by the petitioners by invoking the extra-ordinary writ jurisdiction of this Hon'ble Court.

8. The writ petition thus, fails and is accordingly dismissed.

9. The aforesaid order of dismissal shall, however, not stand as a bar for the petitioners to avail the statutory remedy, if so advised.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)