Form No. J.(2)
Item No. 4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
HEARD ON: 16.04.2024

DELIVERED ON: 16.04.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA
M.A.T. 713 of 2024
With
IA No. CAN 1 of 2024
CTE Tea Private Limited & Anr.
Vs.
The Additional Commissioner of Revenue,
Fairley Place Charge & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Aggarwal
Mr. Piyush Khaitan
.........for the appellants

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique
Mr. Tanoy Chakraborty
Mr. S. Sanyal **......for the respondents**

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated 5th April, 2024 in W.P.A. 7736 of 2024 by which the writ petition filed by the appellants challenging the adjudication order was dismissed largely on the ground that it is an appealable order. However, in the facts and circumstances of the case, we find that the authority while passing the adjudication order under section 73(9) of the West Bengal Goods and Services Tax Act, 2017 read with rule 142(5) of the West Bengal Goods and

Services Tax Rules, 2017, though has noted in specific the reply submitted by the assessee in Form GST DRC-01A, has not adverted to the same nor returned any finding.

2. More or less an identical case was considered by this Court in the case of **Suncraft Energy Private Limited and Another vs. Assistant Commissioner, State Tax, Ballygunge Charge and Others** reported in **2023 SCC OnLine Cal. 2226** . In the said case also, the registered taxpayer had produced proof to show that not only the price of the goods and services rendered was paid but the taxes were also paid. In such circumstances, the Court was required to decide as to what course of action, the authorities should do and in paragraph 9 of the said judgment, the Court has rendered the following finding:

> *"9. The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable there on, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business or the fourth respondent does not have any assets and such other contingencies, straight away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20.02.2023 is not sustainable."*

3. The appeal filed by the State against the said judgment before the Hon'ble Supreme Court has been dismissed in the case of **Assistant**

Commissioner of State Tax, Ballygunge Charge & Ors. vs. Suncraft Energy Private Limited & Ors. reported in **[2024] 121 GSTR 290 (SC).**

4. This aspect was also noted by the Court in the case of **Diamond Beverages Pvt. Ltd. & Anr. vs. The Assistant Commissioner of CGST & CX** reported in **[TS-705-HC (CAL) –2023-GST].**

5. Thus, in the light of the law laid down in the aforementioned decisions, the order passed by the adjudicating authority dated 8th February, 2024 has to be set aside and the matter has to be remanded to the authority to take note of the decisions referred to above and proceed to take action in accordance with law.

6. In the result, the appeal is allowed. Consequently, the order passed in the writ petition is set aside and the order passed by the adjudicating authority dated 8th February, 2024 is set aside and the matter is remanded to the authority for fresh consideration.

7. The authorities shall afford an opportunity of personal hearing to the authorised representative of the assessee and pass fresh orders on merits and in accordance with law taking note of the facts and circumstances as well as the legal position.

8. No costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)