

22.05.2024.
Item No.
ML-81
Court No.5
Saswata

W.P.A. 11523 of 2024

**M/s Essel Kitchenware Limited & Anr.
versus
The Joint Commissioner of State Tax, Large Tax payer
Unit, Corporate Division & Ors.**

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan

...For the petitioners

Mr. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal

...For State

1. The petitioners challenge the order dated 29th August 2023 issued under Section 73 (9) of the WBGST & CGST Act, 2017 (hereinafter referred to as the "said Act") in respect of the financial year 2017-18. It is the petitioners' case that the petitioner no.1 had been served with a show cause notice dated 9th March 2023 under Section 73(1) of the said Act. Unfortunately, although, the said show cause notice was uploaded on the portal the petitioners could not access the said portal since, the consultant engaged by the petitioners did not convey such information to the petitioners.
2. According to the petitioners it was for the consultant to look into the portal and take steps in the matter. Unfortunately, the said consultant without informing the petitioners as regards the aforesaid show cause had left the job. Subsequently, when the petitioners engaged a new

consultant the petitioners had come to learn with regard to the aforesaid order dated 29th August 2023 passed under Section 73(9) of the said Act.

3. Mr. Kanodia, learned advocate appearing for the petitioners by drawing attention of this Court to the order passed under Section 73(9) of the said Act submits that it would be apparent from the aforesaid that during filing of GSTR-3B for the financial year 2017-18, Input Tax Credit on Import of Goods amounting to Rs.2.94 crores was inadvertently reported in all other ITC table [Table 4(A)(5)] of GSTR – 3B instead of reporting the same in ITC on Import of Goods table [Table 4(A)(1)]. The adjudication order mentions that the Input Tax Credit on Import of Goods in GSTR-2A exceeds that availed by the petitioners in Table 4A(1) by Rs. 2.93 crores.
4. By placing before this Court the annual returns in Form GSTR-9, it is submitted that the petitioners had duly rectified such error. Unfortunately, by reasons of the failure on the part of the petitioners to represent themselves before the proper officer, that the same could not be placed. The petitioners seek an opportunity for reconsideration of the aforesaid issue by the proper officer.
5. Mr. Siddiqui, learned advocate enters appearance on behalf of the State. He submits that the

aforesaid order is an appealable order and the petitioners can approach the appellate authority.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case there appears to be a bonafide error on the part of the petitioners which aspect has not been considered by the proper officer. However, without going into such issue and taking note of the fact that the consultant engaged by the petitioners had left the job without properly informing the petitioners as regards the above proceedings, I am of the view that a further opportunity ought to be provided to the petitioners to bring on record the aforesaid fact and properly explain the aforesaid contention before the proper officer.
7. In view thereof, the order dated 29th August 2023 issued under Section 73(9) of the said Act is set aside and the matter is remanded back to the proper officer. The petitioners shall be at liberty to file their response within 10 days from the date. If such response is filed by the petitioners and / or in the event no such response is filed, the proper officer shall, after giving an opportunity of hearing to the petitioners, dispose of the said proceeding by passing a fresh order under Section 73(9) of the

said Act within a period of 4 weeks from the date of affording personal hearing to the petitioners.

8. The above directions are based on the condition that the petitioners make payment of an amount of Rs.50,000/- with the State Legal Services Authority within a period of 10 days from date. The proof of payment must be submitted by the petitioners before the proper officer, at the time of hearing.
9. With the above directions and observations, the writ petition being WPA 11523 of 2024 is accordingly disposed of.
10. 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.)