4th July, 2024
(AK)
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W.P.A 12484 of 2024

Mumbai Brahamaputra Infracon Private Limited and another
Vs.
Assistant Commissioner of State Tax, Armenian Street & Amratala Charge, West Bengal and others

Mr. Parag Kothari
...for the petitioners.

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State.

1. The present writ petition has been filed, inter alia, challenging the adjudication order passed under Section 73(9) of the West Bengal GST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 29th January, 2024.
2. It is a petitioners' case that on 24th November, 2023, the petitionerno.1 was served a show-cause notice issued under Section 73 of the said Act highlighting the discrepancies.
3. From the aforesaid show-cause notice, it would transpire that the petitioner no.1 was primarily required to show cause for having availed Input Tax Credit (ITC) in excess as also as regards the proposal for reverse of ITC.

4. In response to the same, the petitioner no.1 had in its reply to the show-cause by communication in writing dated 18th November, 2023, inter alia, claimed that the petitioner no.1 is only responsible for the book of accounts, returns filed by the petitioner no.1 and cannot be called upon to pay the tax, if any, in the event its supplier fails to meet its legal obligations.

5. In the said response, the petitioner no.1 had also placed reliance on a judgment delivered by the Division Bench of this court in the case of *Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner, State Tax, Ballygunge Charge* in *MAT 1218 of 2023.*

6. The proper officer after offering an opportunity of personal hearing to the petitioner no.1, had decided the said show-cause by passing an order under Section 73(9) of the said Act, dated 29th January, 2024, for the tax period April 2018 to March 2019.

7. Challenging the said order the present writ petition has been filed.

8. It is submitted that although, the proper officer was obliged to call for the records prior to passing the adjudication order, no records were called for. The show-cause notice had been disposed of by passing a mechanical order. In the circumstances the petitioners submit that the aforesaid order should be set aside.

9. It is still further submitted that the remedy in the form of appeal is not efficacious as for maintaining an appeal the petitioners would be required to deposit 10% of the disputed tax amount and considering the financial position of the petitioner no.1, it would be difficult to make such payment especially when the petitioner no.1 at present is not carrying on any business.

10. Mr. Siddiqui, learned Advocate appearing on behalf of the respondents, on the other hand, submits that the petitioner no.1 has a efficacious remedy in the form of a statutory appeal.

11. By placing before this court the response filed by the petitioners to the show-cause notice, it is submitted that the said response is as vague as it can be. No particulars have been disclosed.

12. The proper officer had, however, prior to disposing of the aforesaid show-cause had afforded opportunity of hearing to the petitioner no.1.

13. If the petitioner no.1 chose not to give proper explanation and failed to file appropriate response including documents in support thereof, the proper officer cannot be made responsible therefore. No case for interference has been made out. The petition deserves to be dismissed.

14. Heard learned Advocates appearing for the respective parties and considered the materials on record.

15. Admittedly in this case, it is noticed that the subject matter of challenge in the writ petition is an adjudication order passed by the proper officer under Section 73(9) of the said Act in respect of the tax period April 2018 to March 2019.

16. A consequential demand along with the summary of the order has also been issued. Although Mr. Siddiqui has submitted that there is no irregularity in the order impugned as there has been no disclosure by the petitioner no.1, however, since, there is a statutory remedy in the form of an appeal, without going into the issue as to whether the explanation offered by the petitioner no.1 to the show-cause notice is a proper explanation, I am of the view that the petitioner no.1 should be permitted to approach the Appellate Authority.

17. Although Mr. Kothari, learned Advocate representing the petitioners by claiming that by reasons of financial stringency, the remedy in the form of an appeal may not be efficacious, however, there is nothing on record to substantiate the same. No document in support of its financial condition has been disclosed.

18. Further since, the statutory remedy requires a pre-deposit to be made for maintaining the appeal, I am of the view that the petitioner no.1 cannot, in the given facts, be permitted to maintain an appeal without making such statutory pre-deposit.

19. Although, the writ petition is pending for some time and the time to file the appeal has expired, I am of the view that if the petitioner no.1 files an appeal within a period of fifteen days from the date of passing of this order with the Appellate Authority, the Appellate Authority shall hear out the appeal on merits, subject to compliance of other formalities.

20. With the aforesaid directions, writ petition stands disposed of.

21. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)