20th June, 2024
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W.P.A 12739 of 2024

Jagannath Heights Private limited and another
Vs.
The Joint Commissioner, State Tax, Park Street and others

Mr. Arnab Chakraborty
Mr. Arijeet Bera
...for the petitioners.

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

Mr. Kaushik Dey
Mr. Sujit Mitra
...for the respondent nos.2, 3 & 5.

1. Affidavit-of-service filed in court today be kept on record.
2. Challenging the initiation of proceedings under Section 73 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), including the order dated 20th December, 2023 passed thereon, the present writ petition has been filed.
3. Mr. Chakraborty, learned Advocate representing the petitioners by drawing attention of this Court to the order dated 22nd November, 2023 passed by the Joint Commissioner, CGST & CX, Kolkata South

Commissionarate submits that in respect of the tax period September 2017 to March 2021 issued in the Form GST DRC-01, (tax period is wrongly mentioned therein as April 2020 to March 2021), a determination has already been made. Notwithstanding the aforesaid, a fresh proceeding had been initiated in respect of the tax period July 2017 to March 2018 by the respondent no.1 by invoking the provisions of Section 73 of the said Act. The same has ultimately culminated in the order dated 20th December, 2023.

4. It is submitted that the determination made by the State authorities overlap on the determination made by the Central Authorities and to the extent as aforesaid the subsequent order passed by the State Authorities cannot be sustained.

5. Mr. Siddiqui, learned advocate enters appearance on behalf of the State and by placing before this Court the copy of the written instructions which is taken on record, submits that since, the issue as regards reversibility of ITC availed in violation of the provisions of Section 16(4) of the said Act was adjudicated upon by the Joint Commissioner, Central Tax, CGST & CX, Kolkata South Commissionerate by issuing an order in original dated 22nd November, 2023 and since, on the same

premise the Joint Commissioner, State Tax, Kolkata had issued the order dated 20th December, 2023, the State authorities do not intend to enforce the order dated 20th December, 2023 to the extent the determination made by the State authorities over laps with the determination already made by the Central authorities. The above decision has been taken in consonance with the provisions of Section 6(2)(b) of the said Act.

6. Having regard to the above and since, State does not want to pursue with the determination made vide order dated 20th December, 2023, let the aforesaid order dated 20th December, 2023 be set aside.

7. It is made clear that the aforesaid order is passed on the basis of the written instructions issued by the State authorities which has already been retained with the record.

8. Since, nothing survive in the present petition, the same accordingly stands disposed of.

9. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)