20.08.2024
Item No.4
gd/ssd

FMA/777/2024
M.M.T.C. LTD.
VS
COMMISSIONER OF CGST AND CX
KOLKATA(NORTH) AND ORS.
IA NO: CAN/1/2024

Mr. Atish Dipankar Ray,
Ms. Sanjukta Ray
..for the Appellant.

Ms. Ekta Sinha
..for the CGST Authorities.

Ms. Smita Das De
..for the Union of India.

1. This intra court appeal by a Government of India Company is directed against the order dated 1st April, 2024 in WPA 3930 of 2024.

2. In the said writ petition the appellant had challenged an order of adjudication passed by the Addiitional Commissioner of CGST and Central Excise, Kolkata North Commissionerate dated 9th November, 2023 under the provisions of the CGST Act as also the show cause notice dated 31st August, 2023.

3. The learned writ court after considering the submissions made on behalf of the appellant held that the order which was impugned in the writ petition not only contains facts in detail as well as the submissions made by the writ petitioner but also contains interpretation of the legal provisions and the legal issues and also regarding the citations which were

relied upon. The court also found that there has not been any violation of principles of natural justice nor that the writ petitioner was denied opportunity of personal hearing nor that the adjudicating authority did not have jurisdiction to pass the order nor the order is a non-speaking order.

4. Therefore, the learned writ court declined to exercise its jurisdiction under Article 226 of the Constitution of India and relegated the appellant to avail the statutory appellate remedy.

5. The learned advocate appearing for the appellant has vehemently contended that the order passed in the writ petition calls for interference and it is not necessary for the appellant to invoke the statutory appellate remedy.

6. In support of his contention reliance was placed on the decision of the Hon'ble Supreme Court in *Syed Maqbool Ali v. State of Uttar Pradesh and Another* in *(2011) 15 SCC 383* and paragraph 11 of the judgment was relied upon. In the said case the question which fell for consideration before the Hon'ble Supreme Court whether the High Court could have dismissed a writ petition seeking a direction to acquire the land and pay compensation on the ground that the land of the appellant therein has been taken over without acquisition by holding that the remedy lies under Section 18 of the Act.

7. Considering the factual position, the Hon'ble Supreme Court held that the question that will ultimately weigh with the High Court is whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action.

8. We failed to understand as to how the decision can in any manner be of the assistance to the appellant.

9. As pointed out earlier what was impugned in the writ petition passed under the CGST Act, the appellant had afforded an opportunity of personal hearing, they were represented before the authority, the authority has given detailed reasons in support of its conclusion.

10. Undoubtedly, to adjudicate the correctness of the order of adjudication dated 9th November, 2023 questions of fact have to be gone into. Even in the writ petition one of the primary grounds raised by the writ petitioner was whether the CGST department loss sight of the fact that supply of lentil is exempted and, therefore, the amount received by the writ petitioner from government towards deficit price of lentil also is exempted from payment of any GST on the same.

11. On a cursory perusal of the adjudication order which was impugned in the writ petition, we find in paragraph 5.14 the stand taken by the appellant was examined and the authority for such reasons recorded therein as held that the claim of the appellant that it is a subsidy is incorrect and it is a consideration.

12. Thus, disputed questions of fact have to be adjudicated and that was adjudicated by the authority and he has arrived at a conclusion.

13. If the appellant is aggrieved by the finding and appeal has been provided under the Act before the Commissioner of CGST and Central Excise (Appeals) Kolkata without exhausting such remedy, the writ petition could not have been failed and rightly refused to be entertained by the learned writ court.

14. Thus, for the above reasons, we find no grounds to interfere with the order passed by the learned Single Bench.

15. Accordingly appeal fails and dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)