20.08.2024
Item No.
AD 1
Saswata

W.P.A. 14984 of 2024

M/s Saptarshi & Anr.
versus
Deputy Commissioner of State Tax, Bureau of Investigation, South Bengal HQ & Ors.

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

...For the petitioners

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal

...For the respondents

1. Supplementary affidavit filed in Court today is retained with the record.

2. Challenging the order dated 7th May, 2024 passed on remand under Section 73 of the WBGST/CGST Act 2017 (hereinafter referred to the "said Act") for the tax period from August, 2017 to March, 2018 as also the order dated 30th March, 2024 passed under Section 73 of the said Act for the tax period from April, 2018 to March, 2019 and the order dated 7th May, 2024 passed under Section 73 of the said Act for the tax period from April, 2019 to March, 2020, the present writ petition has been filed.

3. Mr. Kanodia, learned advocate appearing for the petitioners by placing before this Court the order dated 18th December, 2023 passed by the Additional Chief Secretary, Finance Department, Government of West Bengal submits that taking note of the fact that the contracts which were awarded in favour of the petitioners by the respondent nos. 5 and 6 on 9th January, 2017 and on 24th January, 2018,

the Additional Chief Secretary was pleased to observe as follows:-

> *4. The GST contract (b) was awarded on 24.01.2018, that is, after "Publication of the Unified Schedule of Rates (USOR) of Irrigation & Waterways Department" issued vide Memo No. 350(9)/SW dated 19.01.2018 came into effect. On examination of the clauses to the "Preamble" portion of such USOR where from it is noted that:-*
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> > *(a) Clause 11: After promulgation of GST Act, 2017, the rates of items have been derived in this USOR considering only the basic price exclusive of GST and Construction Labour Welfare Cess.*
> >
> > *(b) Clause 14: GST as applicable and Construction Labour Welfare Cess @ 1.00% are to be added with schedule of rates while arriving the estimated rate for preparation of estimate and BoQ as well.*
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> *Thus, in respect of contract (b), it is observed that the instant contract was awarded as exclusive of taxes. Hence, the tax as applicable in this case i.e. @12% on the value of supply may be payable by the Administrative Department to the contractor, subject to the terms and conditions of the contract in this regard."*

4. Having regard thereto, he submits that the Additional Chief Secretary had categorically provided that the contractee department being the respondent nos. 5 and 6 are liable to compensate the petitioners for the incremental tax burden incurred due to implementation of GST by 4.05 per cent in respect of the final RA Bill dated 29th March, 2018 for the aforesaid contract dated 9th January, 2017 awarded in the pre-GST regime and by 12 per cent of the contract value in respect of the contract (b) noted above subject to the terms and conditions of the respective contracts and upon satisfaction of the department in terms of the relevant rules.

5. It is submitted that notwithstanding the aforesaid direction, the GST authorities had finally determined the

tax liability of the petitioners on one hand and on the other hand despite the observation made by the Additional Chief Secretary, no steps were taken by the respondent nos. 5 and 6 to disburse the additional payments in respect of the final RA bills. Subsequently, after the present writ petition was filed, by a communication in writing dated 29th July, 2024, the petitioners' advocate was intimated that an amount of Rs.24,68,253/- had been sanctioned by the respondent no. 6 against the bill no. 147/24-25 dated 26th July, 2024. It is further contended that the aforesaid amount was released in pursuance to the direction issued by the Additional Chief Secretary, Finance Department vide his order dated 18th December, 2023.

6. By placing before this Court the supplementary affidavit and in particular the Form GST DRC – 03 dated 29th July, 2024, it is submitted that the entire amount that was credited by the respondent no. 6 in favour of the petitioners, was transferred to the GST authorities by the petitioners in discharge of their tax liability. By referring to the orders impugned, Mr. Kanodia submits that a perusal of the orders which form subject matter of challenge in the present writ petition along with the demand raised by the respondents in From GST DRC – 07 issued on 7th May, 2024 (for the tax period August, 2017 to March, 2018), 30th March, 2024 (for the tax period April, 2018 to March, 2019) and 7th May 2024 (for the tax period April, 2019 to March, 2020), read with the Electronic Liability Ledger, would in no uncertain terms, show that the demand raised by the respondents and the payment made by the petitioners in

Form GST DRC-03 dated 29th July, 2024 would tally with the tax liability of the petitioners.

7. Independent of the above, by placing before this Court the Gazette Notification published by the Ministry of Law and Justice on 16th August, 2024, he submits that the CGST Act 2017 has already been amended pursuant to the recommendation made by the GST Council on 22nd June, 2024, whereby Section 128A has been inserted after Section 128 of the CGST Act. By placing reference to Section 128A(1)(b) of the CGST Act, 2017 he submits that in the light of the aforesaid amendment in the instant case although three separate orders have been passed under Section 73(9) of the said Act, since, no appeal had been preferred therefrom, there is no order passed under Section 107(11) of the said Act. Since, orders impugned cover the period between 1st July, 2017 and 31st March, 2020 and since, the petitioners had paid the full amount of tax payable as per the orders as referred to in Clause (b) of Section 128A(1) of the CGST Act, 2017, no interest liability or penalty can be thrust on the petitioners and all proceeding in respect of the above orders shall be deemed to be concluded, subject to such condition as may be prescribed.

8. It is submitted that the date within which such payment is required to be made is yet to be notified, though on the basis of the recommendations made in the 53rd GST Council Meeting, the date to be notified is 31st March, 2025. Having regard thereto, Mr. Kanodia submits that this matter requires reconsideration by the authorities.

9. Mr. Ray, learned Government Pleader submits that though the petitioners, prima facie, appear to have discharged their tax liability pursuant to the orders which are impugned in the present writ petition, however, proper computation is required to be made, since the same would require reconciliation of the Electronic Credit Ledger and the payment made by the petitioners in Form GST DRC – 03 dated 29th July, 2024.

10. Having heard the learned advocates appearing for the respective parties and taking note of the factum of payment made by the petitioners in Form GST DRC – 03 dated 29th July, 2024 and the amendment to the CGST Act, 2017, inter alia, including the insertion of Section 128A(1), 128A(1)(b), and the recommendations made in the 53rd GST Council Meeting, I am of the view that the matter requires reconsideration by the respondent no. 1.

11. In view thereof, while remanding the matter back to the respondent no. 1, I direct the respondent no. 1 to reconsider the aforesaid issue and to pass a fresh reasoned order.

12. Till such time, a fresh reasoned order is passed, the orders impugned, including the demands raised by the respondents in Form GST DRC – 07 which are impugned in the petition shall remain stayed.

13. With the above directions and observations, the writ petition being WPA 14984 of 2024 is accordingly disposed of.

14. 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.***)