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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15364 of 2024

Alampur Service Station
Versus
The State of West Bengal & Ors.

Mr. Promit Majumdar
Ms. Uzma Ali
… For the petitioner.

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 show cause notice dated 21st December, 2023 and the order dated 12th April, 2024 passed under Section 73 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), for the tax period April, 2018 to March, 2019.

2. It is the petitioner's case that originally Form GST DRC-01A was issued calling upon the petitioner to make payment of the tax for the relevant period.

3. According to the petitioner, the column determining the interest payable was left blank. The said notice, however, intimated the petitioner to make payment of the amount as ascertained along with applicable

interest. It was provided in the said notice that failing compliance a show cause notice would be issued. The petitioner had in compliance thereof, made payment of the entirety of the demand in Form GST DRC03 on 14th November, 2023.

4. Mr. Majumder, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to the acknowledgement and acceptance of the payment made voluntarily, in Form GST DRC 04 dated 22nd December, 2023 for the tax period April, 2018 to March, 2019 submits that the said payment was accepted to the extent of amount paid and to the reasons stated. The petitioner while making payment had categorically stated that no interest in terms of the provision contained in Section 50(3) of the said Act is applicable, as ITC though availed was not utilized. According to the petitioner once, the respondents had issued acknowledgement in GST DRC 04 as aforesaid by accepting the reasons and the amount, no further action was called for.

5. Notwithstanding the aforesaid, a show cause notice was issued in GST DRC 01 on 21st December, 2023 in respect of the tax period April, 2018 to March, 2019. Despite the fact that the petitioner having responded to the same and having clarified its

position, as regards non-utilization of ITC, an order under Section 73(9) of the said Act was issued by the proper office on 12th April, 2024, *inter alia*, by observing that though the petitioner had reversed the due tax but had not paid interest for late payment/reversal and had accordingly determined the interest payable by the petitioner.

6. Mr. Majumder, however, by drawing attention of this Court to the provision of Rule 142(1A) of the Central/West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as the “said Rules”) submits that before service of notice to persons chargeable with tax, interest and penalty under sub-section (1) of Section 73 or sub-section (1) of Section 74 as the case may be the registered tax payer is required to be communicated the details of any tax, interest and penalty as ascertained by the said proper officer in Form GST DRC-01A. Since, no such notice had been issued the aforesaid order cannot be sustained.

7. It is also submitted that the petitioner without being called upon to show cause why interest shall not be levied, no final order in this regard could have been passed. The petitioner had, in fact, been prevented from offering an appropriate response by reasons of

show cause notice not identifying that the interest was leviable upon the petitioner. There is also no finding that ITC was availed and utilized by the petitioner.

8. Mr. Siddiqui, learned advocate enters appearance on behalf of the State respondents. He, however, acknowledges the fact that in this case neither in the notice issued in Form GST DRC 01A or the show-cause notice in Form GST DRC 01, any quantum had been determined on account of interest which had been communicated to the petitioner. He submits that in the instant case, the respondents have taken note of the factum of the petitioner making payment pursuant to the notice issued in Form GST DRC 01A dated 3rd November, 2023 for the tax period April, 2018 to March, 2019 and the interest had been computed accordingly.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. Without going into the issue as to whether the petitioner can at all be made liable for interest, I would consider as under. Since in this case the notice in GST DRC 01A and the show cause notice in GST DRC 01 does not identify the quantum of interest determined by the respondents, though statutorily being required to identify and

communicate the same, and especially in the light of issuance of the acknowledgment in FORM GST DRC 04 dated 22nd December, 2023, it was all the more necessary to communicate the liability of the petitioner on account of interest. Having not done so, in my view the petitioner was denied adequate opportunity to respond and explain why no interest was leviable in the context of Section 50(3) of the said Act. The above order as well as the show-cause notice stands vitiated on such ground. The show cause notice dated 21st December, 2023 issued in FORM GST DRC 01 and the order dated 12th April, 2024 for the tax period April, 2018 to March, 2019 issued under Section 73 of the said Act are accordingly set aside.

10. This order shall, however, not stand in the way of the respondents for initiating any proceeding against the petitioner for recovery of any due, including interest, if they are otherwise entitled in law.

11. With the above observations and directions, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)