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27.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17085 of 2024

M/s. A. K. Enterprises
Versus
The Deputy Commissioner of State Tax,
Howrah Zone, Bureau of Investigation & Ors.

Mr. Debasish Ghosh
Mr. B. Sengupta
... For the petitioner.

Mr. Anirban Ray, Ld.GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the State.

1. Challenging, inter alia, the order passed under Section 74 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") dated 31st December, 2023, for the tax period July, 2017 to March, 2018, the present writ petition has been filed.

2. Mr. Ghosh, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to the notice issued under Section 151 of the said Act dated 22nd April, 2021, would submit that in the instant case, a superior officer, namely, Joint Commissioner had initiated a proceeding. Having regard to the same, no show cause notice could have been issued in Form GSTDRC-01 dated 29th

September, 2023 by the Deputy Commissioner. He would submit that the above issue is a jurisdictional issue and the same was raised by the petitioner while filing the response to the show cause dated 31st December, 2023. Such issue has not been dealt with by the proper officer at all. It is submitted that on such ground the order passed by the appellate authority can be said to be perverse.

3. It is then submitted that there are no ingredients for invocation of Section 74 of the said Act and the adjudication made under Section 74(9) of the said Act on such ground must fail.

4. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the State respondents. He would submit that the information sought for by the Joint Commissioner was under Section 151 of the said Act. By referring to the provisions of the said Section it is submitted that the Commissioner or any officer as authorized by the Commissioner may direct any person to furnish information relating to any matter dealt with in connection with the Act.

5. Having regard to the above, it is submitted that there is no irregularity on the part of the Joint Commissioner seeking for information from the

petitioner.

6. The proceeding initiated under Section 74 of the said Act by issuing a show cause notice in Form GSTDRC-01 dated 29th September, 2023 by the Deputy Commissioner does not suffer from any jurisdictional error. No determination had been made by the Joint Commissioner. Further the writ petition has been filed belatedly, as such, no interference is called for.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, it appears that a notice was issued on 22nd April, 2021 by the Joint Commissioner under Section 151 of the said Act. Such notice was obviously in connection with the information sought for by the Joint Commissioner. Subsequently, a show cause notice dated 29th September, 2023 for the tax period July, 2017 to March 2018 was issued by the Deputy Commissioner in Form GSTDRC-01. In my view, there was no impediment on the part of the Deputy Commissioner in issuing such show cause despite the Joint Commissioner calling for information under Section 151 of the said Act. Records reveal, though belatedly, the petitioner had filed a response

to the show cause and had questioned the jurisdiction of the Deputy Commissioner to proceed in the matter. Although, the order passed under Section 74 of the said Act does not deal with such issue or with the contention raised, I am of the view that having regard to the nature of the case made out by the petitioner, there is no jurisdictional issue involved and simply because the Joint Commissioner had called for certain information under Section 151 of the said Act, the same did not preclude the Deputy Commissioner from initiating the proceeding under Section 74 of the said Act. Independent of the above, although Mr. Ghosh has strenuously argued that the very jurisdiction to issue a notice under Section 74 of the said Act is absent in the said show cause, however, I find from the response filed by the petitioner on 31st December, 2023, to the aforesaid show cause that the petitioner had not questioned the same. Admittedly, in this case, a determination had been made under Section 74(9) of the said Act on 31st December, 2023. The present writ petition has been filed on 3rd July, 2024. There appears to be no explanation by the petitioner for filing such belated writ petition. On the aforesaid ground, I am of the view that no interference is called for.

8. The aforesaid order shall not stand in the way of the petitioner's right to file an appropriate appeal in accordance with law, if so advised.

9. 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.)