ML -20
02.09.2024
b.r./D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17204 of 2024

RKEC Projects Limited
Vs.
The Assistant Commissioner of Revenue, State Tax, Bureau of Investigation, South Bengal Headquarters & Ors.

Mr. Sandip Choraria,
Mr. Rishav Manna.
... for the petitioner

Mr. Anirban Ray,
Mr. T.M. Siddique,
Mr. T. Chakraborty,
Mr. S. Sanyal.
.. for the State

1. Challenging, inter alia, an order dated 25th January, 2024 passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) for the tax period April 2020 to March 2021, the present writ petition has been filed.

2. Mr. Choraria, learned counsel appearing on behalf of the petitioner by drawing attention of this Court to the show-cause notice issued in form GST DRC 01 dated 4th December, 2023 would submit that the entire demand made by the respondents is on account of interest.

3. According to the petitioner, the petitioner had made payment of its tax liability from the credit

ledger and having regard thereto, no interest can be levied on the petitioner.

4. According to him, the amount available in the credit ledger, for discharging the liability was available from the date when the liability arose till discharge thereof. He submits that the proper officer by glossing over the response filed by the petitioner had determined the liability to the extent of Rs.12,07,186/-.

5. By placing before this Court an unreported judgment delivered in the case of ***M/s. Refex Industries Limited v. The Assistant Commissioner of CGST & Central Exercise*** passed by the Hon'ble High Court of judicature at Madras in W.P. No. 23360 of 2019, he submits that in an identical set of facts, the Madras High Court while answering an issue in favour of the registered tax payer as to whether the interest can be made levied when an Input Tax Credit (I.T.C.) is available in the credit of a registered tax payer, had concluded that on proper application of Section 50 of the said Act it would appear that the same provides for levy of interest on belated cash payment and not on I.T.C. which is available in the credit ledger. He submits since the credit was available with the department to

the credit of the assessee, interest could not have been levied.

6. According to Mr. Choraria, this case is no different from the judgment delivered in the case of ***M/s. Refex Industries Limited*** (supra). He would submit that on such ground the present writ petition should also be allowed.

7. In response to the query of the Court as regards presence of alternative remedy, he would submit that it is a legal issue, the alternative remedy cannot defeat the right of the petitioner to maintain its action before this Court.

8. Mr. Chakraborty, learned counsel appearing on behalf of the respondents on the other hand would submit that a determination has already been made under Section 73 of the said Act. The petitioner has an alternative remedy in the form of an appeal before the Appellate Authority. In such view of the matter, when efficacious alternative remedy is available, this Court should not entertain the present writ petition.

9. He submits that the judgment delivered in the case of M/s. Refex Industries Limited (supra) is factually distinguishable from the present case. No reliance should be placed on the same.

10. Heard learned advocates appearing for the respective parties and considering the materials on record, I find that the petitioner by the present writ petition questions an adjudication order passed on 25th January, 2024 in respect of the period April 2020 to March 2021.

11. From the bare perusal of the show-cause notice in form GST DRC 01 dated 4th December, 2023 for the tax period from April 2020 to March 2021 it transpires although the petitioner claims to have responded to the show-cause and the reflection thereof is available in the impugned order, the petitioner has chosen not to annex such reply. The petitioner however, insists that this Court should go into the merits of the case and by proceeding on the premise that I.T.C. was available to the credit of the petitioner should set aside the order including the demand raised by the respondents in form GST DRC – 07 dated 25th January, 2024. In my view, there are factual issues, which may require detailed scrutiny of records.

12. I, however, notice that the statute itself incorporates not only one but two several appellate authorities, one right of appeal succeeding another. Though, the Appellate Tribunal under

the said Act is yet to be constituted, the first appellate authority is very much functional.

13. Independent of the above, the order impugned has been passed on 25th January, 2024. The present writ petition has been filed more than five months thereafter, that is, on 4th July, 2024. Apparently, there is no explanation in the petition as to what prevented the petitioner from filing the writ petition earlier.

14. Be that as it may, since, the petitioner has an alternative remedy, I am of the view that there is no scope to entertain this writ petition.

15. In view thereof, the writ petition cannot be entertained and accordingly fails. The above order shall not however, stand in the way of the petitioner to apply before the Appellate Authority, if so advised, especially, having regard to the fact that the Appellate Tribunal under the said Act is yet to be constituted, as such the petitioner cannot be regarded remediless.

16. If the petitioner applies before the Appellate Authority within a period of three weeks from date, the Appellate Authority having regard to the observations made herein and the pendency of this writ petition before this Court by

condoning the delay shall hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of eight weeks from the date of communication of this order. Subject to compliance of other formalities by the petitioner.

17. With the above observations and directions, the writ petition stands disposed of.

18. Urgent certified copy of this order, if applied for be made over to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)