01.10.2024
Item No.06
RP/AN
Ct. No.1

MAT 1837 OF 2024
With
IA No.CAN 1 of 2024
With
IA No.CAN 2 of 2024

M/s. Sales Emporium
Vs.
The Superintendent of Central Tax, Range V, Khardah Division, Kolkata North Commissionerate & Ors.

Mr. J.K. Mittal
Mr. Paritosh Sinha
Mr. Amitava Mitra
Ms. Sonia Nandy
……for Appellant
Mr. Vipul Kundalia
Mr. Kaustav Kanti Maity
…..for CGST Authority
Mr. Partha Ghosh
Mr. Amal Kumar Datta
…..for Union of India

1. We have heard the learned advocates for the parties.

2. This intra-Court appeal by the writ petitioner is directed against the order dated 11th September, 2024 passed by the learned Single Bench in WPA 18757 of 2024. By the said order the learned writ Court while agreeing to hear the writ petition challenging the adjudication order, which is an appellable order, keeping the point of maintainability of the writ petition open, directed the appellant to

deposit 10% of the total amount of tax in dispute which approximately comes to Rs.25/- crore.

3. In this appeal CAN 1 of 2024 has been filed by the appellant seeking to raise additional grounds. In fact, the argument of the learned advocate appearing for the appellant is solely based on the additional grounds, which were not canvassed in the writ petition. Nonetheless, the additional grounds raised appear to be the questions on law since the appellant's contention is that scrutiny of the returns for the period 2018-2019 was done sometime in 20th January, 2023 and the first respondent, who, according to the appellant, is a proper officer, issued a notice for intimating the discrepancies in the return after scrutiny for the said period, namely, 2018-2019. The appellant was called upon to explain the discrepancy or pay the short pay tax. The appellant submitted its reply to the show cause notice dated 17th January, 2023 in Form No.GST ASMT-11. To be noted that the reply in Form GST ASMT-11 is a reply to the show cause notice issued under Section 61 of the CGST Act, 2017 dated 2.1.2023. In such reply the appellant contended that during the period 2018-2019 there was an inadvertent typographical /clerical error in GSTR-1 which was rectified in GSTR-9 and duly reconciled at

the time of filing GSTR-9C. The details regarding the turnover was also mentioned there in the reply and the appellant would state that unreconciled figure was detected at the time of filing GSTR-9C and the same was paid. Copies of audited final accounts, GSTR-9 and GSTR-9C were annexed to the reply. On receipt of the reply the proper officer had two options, namely, if he is satisfied with the reply he may choose not to proceed further in the matter and secondly, if he does not accept the reply submitted by the appellant and if the officer is satisfied that there was a short pay of tax then the procedure for issuance of show cause notice has to be adhered to in terms of the statutory provisions.

4. Prima facie we find that in the second show cause notice, which was issued by the second respondent on 30th January, 2024, there is no mentioning of the earlier proceeding. The issue would be as to whether this can be done and the second respondent can proceed further dehors the proceedings, which was initiated by the first respondent under Section 61 and upon receipt of the reply not to choose to proceed further. This, in our opinion, can be the only issue, which can be agitated in the writ petition amongst all other issues touching upon the facts. Therefore, we grant leave to the appellant to raise

additional grounds. Accordingly, CAN 1 of 2024 is allowed granting leave to the appellant to amend the writ petition by raising additional grounds. Had the appellant filed a statutory appeal pre-deposit condition would have been mandatory. However, since we find that the question of law requires to be decided in the writ petition, which may involve adjudication of the disputed question on fact, we are of the view that the condition of depositing 10% of the disputed tax will be onerous on the appellant. Therefore, we dispose of the appeal by slightly modifying the order and direction issued by the learned Single Bench and, accordingly, we direct the appellant to furnish a bank guarantee for a sum of Rs.5/- crore without prejudice to its rights and contentions to the satisfaction of the appropriate authority of the respondent department within a period of three weeks from the date of receipt of the server copy of this order.

5. In the light of the above, the demand, which has been raised in the adjudication order, which was impugned in the writ petition, shall remain stayed. However, if the appellant fails to comply with the above condition, this benefit will not enure in favour of the appellant and the appeal will automatically stand dismissed.

6. In the result, the appeal and the connected applications are allowed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)