20.02.2024
Item No.1
RP/AN
Ct. No.1

MAT 2400 of 2023
+
IA No. CAN 1 of 2023

Bivas De
Vs.
The State of West Bengal & Ors.

Mr. Aniket Mitra
Mr. Arka Ghosh
.....for the Appellant

Mr. Anirban Ray, Ld. G.P.
Mr. T.M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
.....for State

1. This intra-Court appeal is directed against the order dated 13th July, 2023 by which the learned Single Bench declined to grant any interim order in the writ petition but directed the respondents to file their affidavit-in-opposition within a time frame. Since the issue lies in a narrow campus, the learned advocate for the appellant requests the Court to take the writ petition along with the appeal and dispose of the same by a common order and judgment. His request is acceded to and the writ petition as well as the appeal and the connected application are disposed of by this common order and judgment.
2. There was an allegation that the appellant had availed input tax credit in excess of his entitlement.

There were several proceedings and earlier a writ petition was filed before a Single Bench of this Court and ultimately the matter was culminated in an order dated 2nd December, 2023 passed by the Assistant Commissioner of Revenue, Barasat Charge. The operative portion of the order reads as follows.

"The taxpayer has replied in Part B of the Form GST DRC-01A on 28.11.2023. In his reply, the taxpayer claimed that the entire tax amount was realized from his credit ledger of Rs.12440518.00 (Form IGST-Rs.20386, Form CGST-Rs.6214409 and Form SGST-Rs.6205723.00). He also informed in his reply that he challenged the order by filing a Writ Application No.15766 of 2023 before the Honorable Calcutta High Court. From the B.O. portal it is found that the taxpayer availed ITC of Rs.11700.00 under the IGST, Rs.6214409.00 under the CGST and Rs.6214409.00 under the SGST for the period from 01/04/2018 to 31/03/2019 in his return GSTR-3B. It is also found that the order U/S 73(9) of the Act, 2017 and Form GST DRC-07 was issued on 01/02/2022 regarding the excess ITC claimed of Rs.11700.00 under the IGST, ZD190222000087W. Again the Rectification Order was issued U/s 161 of the Act, 2017 on 26/07/2022 for the tax period

April 2018 to March 2019 regarding this matter vide reference no.ZD190722024114P.

All availed ITC for the period from 01/04/2018 to 31/03/2019 was considered in the above mention rectification order vide reference no.ZD190722024114P and the taxpayer filed WPA 15766 of 2023 before the Honorable Calcutta High Court against the rectification order vide reference no.ZD190722024JJ41.

The submission of the taxpayer is found satisfactory after carefully considering the documents and information available and no further proceeding required against the Form GST DRC-01A issued on 04.10.2023 vide reference no.ZD191023003790."

3. As could be seen from the above order the authority has also taken note of the rectification order dated 26th July, 2022 and also the order passed in the earlier writ petition and found the submission of the appellant to be satisfactory and no further proceedings are required to be taken against Form GST DRC-01A issued on 4th October, 2023. If such be the factual situation the garnishee order dated 20th July, 2022 issued to Indian Oil Corporation Limited cannot any longer survive. Equally the order of attachment of the bank account of the appellant cannot also be effective any longer on account of it having lapsed since the period of one

year had elapsed. In this regard, it will be beneficial to take note of the decisions passed in the cases of Badal Shambhubhai Shah vs. Directorate General of Goods and Service Tax Intelligence reported in [2020] 118 taxmann.com 217 (Gujarat) and M/s. Futurist Innovation & Advertising vs. Union of India & Ors. reported in 2022(1) TMI 698- Bombay High Court wherein direction was issued to the competent authority to lift the attachment over the bank account wherein the period of one year had elapsed. In the present case the same principle has to be applied to the appellant. Accordingly, the writ petition and the appeal along with the connected application are allowed with a direction to the authority concerned to lift the garnishee order dated 20th July, 2022 by addressing the Indian Oil Corporation and also lift the attachment over the appellant's bank account by addressing his bankers. This direction be complied with within a period of one week from the date of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)