02.01.2024
Item No.17
RP/KC
Ct. No.1

MAT 2434 OF 2023
+
IA NO.CAN 1 of 2023
Shree Madhav Sol Vextracts Pvt. Ltd.
Vs.
Union of India & Ors.

Ms. Sweta Mukherjee
.....for the Appellant

1. This intra-Court appeal is directed against the order dated 17.08.2023 passed in WPA 19418 of 2023 by which the learned Single Bench observed that there is no scope for granting any interim order on the writ petition and directed affidavit-in-opposition to be filed by the Department. We find that there is no error in the said order since as on date no demand notice has been issued on the appellant by the authority concerned.
2. The learned advocate appearing for the appellant would contend that that the Original Authority while issuing a show cause notice on an application for refund filed by the appellant had not mentioned anything about demand of tax but in the final order a demand of Rs.29,63,488/- was made in terms of Section 74 of the GST Act along with appropriate interest thereon in terms of Section 50 of the Act. By the said order dated 30.11.2020 the Assistant Commissioner of Central Taxes, Kharagpur Division

has also simultaneously rejected the entire refund claim. When the order was tested before the Appellate Authority, namely, the Joint Commissioner (Appeals), CGST & CX, Appeal-II Committee, Kolkata, we find that the order only deals with the correctness of the rejection of the refund claim and there is no mention about anything with regard to the demand of tax to the tune of Rs.29,63,488/-. That apart, till date no demand notice was issued.

3. For the above reasons, the appeal along with the connected application stand disposed of granting liberty to the appellant to file a fresh stay application before the learned Single Bench as and when demand notice is issued by the respondent Department and if such an application is filed the learned Single Bench is requested to consider the same on merit. Time to file affidavit-in-opposition as granted by the learned Single Bench stands extended by a period of three weeks from date and reply, if any, shall be filed within a week thereafter.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)