10.06.2024
Sl. No.3(DL)
srm

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

W.P.A. No. 145 of 2024

Dinesh Kumar Parakh

Versus

Deputy Commissioner of Revenue, Bureau of Investigation, (North Bengal), Alipurduar Zone & Ors.

Mr. Sumit Ghosh
…for the Petitioner.

Mr. Subir Kumar Saha, Ld. AGP,
Mr. Dilip Kumar Agarwal
…for the State-respondents.

1. Affidavit-of-service is taken on record.
2. The writ petition arises out of orders dated October 2/3, 2021 and December 21, 2022 passed by the Adjudicating Authority, DCR/BOI(NB), Alipurduar and Senior Joint Commissioner of Revenue, Appellate Authority, Jalpaiguri Circle, respectively.
3. By the order dated October 2/3, 2021, the adjudicating authority determined the tax, interest and penalty payable by the petitioner on reverse charge basis for purchase of tobacco. According to the authority, the petitioner was liable to pay tax on reverse charge

mechanism for inward supply of raw tobacco and tobacco leaves from agriculturists/unregistered persons.

4. The petitioner contended before the adjudicating authority that the petitioner was not liable to pay tax on the reverse charge mechanism as the petitioner had not purchased the tobacco from any agriculturist. The petitioner was only liable to pay tax on outward supplies, that is, upon the sale of such goods. The petitioner had paid such tax. Reliance was placed on the tax invoices, to substantiate such claim. The petitioner also submitted that there was no intention on the part of the petitioner to evade tax.

5. The adjudicating authority was of the view that although opportunity had been given to the petitioner even after issuance of show cause notice, to pay the tax on reverse charge mechanism, he had failed to do so. Accordingly, the adjudicating authority applied the provisions of Section 9(3) of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act) along with 73(5), 73(8), 73(9) and Rule 142(5) of the Rules and determined the tax, interest and penalty payable by the petitioner. The adjudicating authority was of the view that the provisions of Section 9(3) of the said Act squarely

applied in this case as the petitioner had purchased the tobacco from an agriculturist. The notification dated June 28, 2017, casts such liability on the petitioner.

6. Aggrieved by the said order, the petitioner preferred an appeal and the appellate authority passed an order on December 21, 2022, rejecting the appeal, *inter alia*, holding that the petitioner had failed to produce any documentary evidence to substantiate his claim that he had purchased the tobacco directly from a non-agriculturist. The contention of the petitioner that there was no loss of revenue to the department even if he had not paid tax as per reverse charge mechanism, was negated by the appellate authority. The appellate authority was of the view that irrespective of whether the revenue suffered any loss or not, the petitioner would be liable to pay the tax on reverse charge mechanism, as required by the statute.

7. Learned Advocate for the petitioner submits that once the entire tax has been paid to the department and no loss had been suffered by the department, the petitioner cannot be saddled with a further liability to pay tax on the reverse charge mechanism along with the interest and penalty. The petitioner further contends that Section 9(4)

of the said Act will be applicable in this case and not Section 9(3) of the said Act as wrongly applied by the authorities. There being no notification under Section 9 (4) with regard to tobacco leaves, the petitioner should not be saddled with the tax under the reverse charge mechanism.

8. It is the further case of the petitioner that the notification dated June 28, 2017 will not apply as the petitioner purchased tobacco leaves from an unregistered person, who was not an agriculturist. The said notification strictly applied to purchase of tobacco leaves from a supplier of goods who was an agriculturist. It is also contended that the authorities ought to have taken into account the fact that in the absence of any revenue implication, the failure of the petitioner to pay the tax on reverse charge mechanism could be ignored.

9. Section 2(62) of the said Act has been referred to in order to substantiate the claim that even if the petitioner had paid the tax on reverse charge basis pursuant to the decision of the authority, he would be entitled to claim input tax credit. Arithmetically, the payment made by either method would ultimately square off. Thus, further

direction for payment was a double jeopardy upon the petitioner.

10. Mr. Saha, learned Additional Government Pleader for the authorities submits that an intimation dated April 14, 2021 was issued to the petitioner indicating his liability to pay tax under Sections 73(5) and 74(5) of the said Act. The tax payable on reverse charge mechanism which was due for the period between April, 2019 and March, 2020, was calculated petitioner as follows:

	Tax	Interest	Penalty
Total	3,60,855	1,18,146	54,128

11. The petitioner was asked to pay the amount in full within May 3, 2021. Failing which the authority reserved the right to issue a show cause notice under Section 74(1) of the said Act. The petitioner was also given an option to file his written submissions.

12. The petitioner failed to comply and the show cause was issued on August 10, 2021 under Section 73 of the said Act. The petitioner was also asked to file his answer and attend a personal hearing.

13. On September 3, 2021, the petitioner replied to the show cause. The petitioner contended that there was no

evasion or intention to evade tax. The petitioner had discharged his liability by paying tax on outward supply without claiming any input credit on purchases. The adjudicating authority applied the law and passed the order. In the appeal, the appellate authority categorically held that the petitioner’s contention that he had not purchased the tobacco from an agriculturist, but from an unregistered person could not be substantiated by cogent evidence. The appellate authority also took note of the purchase mechanism, which resulted in loss of revenue. The authority held that the goods may have changed various hands after initial purchase from the agriculturist through middlemen or others who did not pay any tax on the plea that the purchase was from non-agriculturists.

14. Heard learned Advocates for the respective parties. There is no doubt that the petitioner had failed to prove that the tobacco was purchased from a person who was not an agriculturist. Even in the writ petition, no document has been annexed which would indicate the vouchers or the cash memo or any other receipt of such sale from a non-agriculturist. The writ petition does not contain any averment with regard to the details of the purchase.

15. In the answer to the show cause, the petitioner had categorically admitted that the proper course of action for him would be to pay the tax on purchases and claim it as an input credit on the outward supply. The petitioner admits to have failed to proceed according to the Act. He claimed to have committed the mistake as GST was a new concept and payment of tax on reverse charge mechanism, was not convenient. The petitioner claimed ignorance of such taxing process. The petitioner submitted before the authority that he did not have any clarity about the notification and the method of discharge of the liability to pay tax on reverse charge mechanism. In the absence of any clarity, the petitioner was of the understanding that once the whole tax liability had been discharged, it did not matter where the tax was paid under the reverse charge mechanism or on the outward supply.
16. The last contention of the petitioner before the appellate authority was that the margin of profit was very low and the tax and penalty caused undue hardship.
17. The petitioner has failed to show how judicial review of the order of the appellate authority is permissible in this case. There is neither any violation of principles of

natural justice nor any misapplication of law. The proper procedure has been followed. The decision making process is not flawed. The laws applicable have been discussed. It is the petitioner's own admission that he had failed to follow the procedure prescribed by law, on account of his ignorance. The plea that no loss was caused to the department, will not be relevant in this context as the High Court under Article 226 of the Constitution of India cannot direct an authority to adjust the tax liability payable by the petitioner, contrary to the statute. The High Court cannot direct the authority to disregard the liability of payment of tax as per Section 9(3) of the said Act read with the notification dated June 28, 2017. The High Court cannot issue a mandamus upon the authority to disregard the law. Article 226 of the Constitution of India does not confer such unbridled power on the High Court to direct an authority to act contrary to law. The law is clear.

18. Section 9(3) is quoted below:

"9(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both."

19. The relevant portion of the notification is quoted below:

" GOVERNMENT OF INDIA MINISTRY OF FINANCE
(Department of Revenue)
Notification No.4/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, <u>hereby specifies the supply of goods, the description of which is specified in column (3) of the</u> Table below and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, made by the person as specified in the corresponding entry in column (4), in respect of <u>which the central tax shall be paid on reverse charge basis by the recipient of the intra-state supply of such goods as specified in the corresponding entry in column (5) and all the provisions of the said Act shall apply to such recipient, namely:-</u>

TABLE

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	x	x	x	x
2.	x	x	x	x
3.	2401	Tobacco leaves	Agriculturist	Any registered person

20. The petitioner's own admission was that tax on reverse charge mechanism was payable and he should have claimed the input credit. The relevant portion of the petitioner's answer to the show cause is quoted below:-

"With respect to above, I want to state that fact that there is no evasion or intension of evasion of tax from our end as we had discharged our liability by paying tax on outward supply without claiming ITC

> on purchases. Although rightful was that we should have paid tax on purchases and claim it as input on our outward supply but I would you to consider few points before demanding tax and penalty from us.“

21. The appellate authority further came to a specific factual finding that the petitioner had failed to prove that the goods had been purchased from a non-agriculturist. The query of the Court as to whether the petitioner had annexed any document to show that the goods were purchased from a non-agriculturist, was answered in the negative. There is no document on record which would indicate that the petitioner’s contention is correct.

22. Thus, the High Court also under Article 226 of the Constitution of India cannot sit in appeal over the order of the appellate authority thereby probing deeper into the facts. Under the reverse charge mechanism, the liability to pay tax has been fixed on the recipient of the supply of goods and services instead of the supplier or the provider, in respect of certain goods or services or both under Section 9(3) or Section 9(4) of the said Act.

23. The objective of reverse charge mechanism was to widen the scope of levy of tax on the unorganized sectors and grant exemptions to specific classes of supplier of goods and services.

24. The petitioner deals in the business of tobacco leaves. As per Section 9(3) of the said Act read with the notification of June 28, 2017, tax had to be paid on reverse charge basis by the petitioner, on purchase of tobacco leaves.

25. Section 9(4) would not be applicable in this case. Secondly, there is also a revenue implication as change of several hands had taken place from the time of initial purchase. No tax had been paid during such interim transactions. The law has provided a mechanism for procurement of revenue from these unorganized sectors, by making the recipient of the supply of goods liable to pay tax at the time of receipt of the goods. The unorganized sectors which are dealing with such goods were brought within the purview of tax liability for the benefit the revenue. Moreover, the no gain no loss concept, in my opinion, should not be brought into this case as the law was correctly applied. Taxing statutes have to be strictly construed. The petitioner cannot be granted any equitable relief. Hardship is not a relevant consideration.

26. In ***Ajmera Housing Corporation & Anr. Vs. Commissioner of Income Tax***, reported in ***(2010) 326 ITR 642/193***, the Hon'ble Apex Court held as follows:-

> "27. <u>It is trite law that a taxing statue is to be construed strictly. In a taxing Act one has to look</u>

merely at what is said in the relevant provision. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. There is no room for any intendment. There is no equity about a tax. (See: Cape Brandy Syndicate Vs. Inland Revenue Commissioner and Federation of A.P. Chambers of Commerce & Industry & Ors. Vs. State of A.P. & Ors.8). In interpreting a taxing statute, the Court must look squarely at the words of the statute and interpret them. Considerations of hardship, injustice and equity are entirely out of place in interpreting a taxing statute. (Also see: Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.)9."

27. In ***M/s Modi Naturals Ltd vs. The Commissioner of Commercial Tax UP***, reported in ***2023 INSC 974***, the Hon'ble Apex Court held as follows:-

> "37. Justice G.P. Singh, in his treatise Principles of Statutory Interpretation (14th Edn. 2016 p. 879) after referring to Micklethwait, In re; Partington v. Attorney General , Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd. v. CIT, State Bank of Travancore v. CIT and Cape Brandy Syndicate v. IRC, summed up the law in the following manner: "A taxing statute is to be strictly construed. The well established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury and Lord Simonds , means:
> 'The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.'
> 38. In a classic passage Lord Cairns stated the principle thus: 'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction

> is not admissible in a taxing statute where you can simply adhere to the words of the statute."
> 39. Viscount Simon quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: (Cape Brandy case 10 , KB p. 71) '… in a taxing Act one has to look merely at what is clearly said. <u>There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'</u>
> 40. It was further observed: "In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation….'."

28. In ***Commissioner of Central Excise, Chandigarh vs. M/s Doaba Steel Rooling Mills***, reported in ***2011 (5) S 637***, the Hon'ble Apex Court held as follows:-

> "19. The principle that a taxing statute should be strictly construed is well settled. It is equally trite that the intention of the Legislature is primarily to be gathered from the words used in the statute. Once it <u>is shown that an assessee falls within the letter of the law, he must be taxed however great the hardship may appear to the judicial mind to be.</u>
> 20. On the principles of interpretation of taxing statutes, the following passage from the opinion of Late Rowlatt, J. in Cape Brandy Syndicate Vs. Inland Revenue Commissioners 1921 (1) KB 64, 71 has become the locus classicus and has been quoted with approval in a number of decisions of this Court:
> '....in a taxing act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no resumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'

21. In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.7 (1961) 2 SCR 189, J.C. Shah, J. observed thus:

'In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency.'

22. In Mathuram Agrawal Vs. State of Madhya Pradesh8 (1999) 8 SCC 667, D.P. Mohapatra, J. speaking for the Constitution Bench, stated the law on the point in the following terms:

'The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.'

23. We do not find any reason to depart from these well settled principles to be applied while interpreting a fiscal statute. Therefore, bearing in mind these principles and the intent and effect of the statutory provisions, analysed above, the conclusion becomes inevitable that Rule 5 of the 1997 Rules will be attracted for determination of the annual capacity of production of the factory when any change in the installed machinery or any part thereof is intimated

to the Commissioner of Central Excise in terms of Rule 4(2) of the said Rules."

29. The decision relied upon by the petitioner in the matter of Commissioner of Central Excise, Pune vs. Coca-Cola India (P) Ltd. reported in 2007 taxmann.com 1875 (SC) does not decide the question as to whether the law permitted an assessee to pay tax under one head or at one stage and get the same written off against his liability to pay tax under another head or at another stage. The relevant portions of the judgment are quoted below:

"6. It is stated by the learned counsel for the assessee that the excise duty paid and the Modvat credit availed under Notification No.5/94-C.E.(N.T.), dt. 1-3-1994 were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.
7. In view of the stand taken by the assessee in the counter-affidavit and the statement made by the learned counsel for the assess, the appeals are dismissed leaving the question of law open. However, there shall be no order as to costs.
8. If upon verification, the submission of the counsel for the assessee is found to be incorrect, liberty is granted to the appellant-Revenue to mention the matter before this Court."

30. Under such circumstances, this Court does not find any reason to interfere with the orders impugned.

31. The petitioner's right to claim input tax credit is kept open and if the petitioner approaches the authority with a claim for input tax credit upon payment of the

determined amount as per the orders impugned, the authority shall consider the prayer in accordance with law and expeditiously.

32. The writ petition is, thus, disposed of.

33. There shall be no order as to costs.

34. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)