Sl. No.30

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

M.A.T. 27 of 2024
with
CAN 1 of 2024
ABG Construction
-Vs-
Assistant Commissioner, CGST &
Central Excise, Bolpur Commissionerate & Ors.

For the Appellants	**:**	Dr. Navin Barik, Adv. Ms. Esha Acharya.
For the respondents	**:**	Mr. Ratan Barik, Adv. Mr. Bishwaraj Agarwal, Adv.
Heard on	**:**	16.05.2024
Judgment on	**:**	16.05.2024

<u>Joymalya Bagchi, J.</u> :-

1. Learned Advocate for the appellant submits that the learned Judge failed to take into consideration the fact that relevant documents submitted by the appellant had not been considered by the Principal Commissioner, CGST, Bolpur Commissionerate.

2. We have gone through the impugned order passed by the learned Single Judge as well as the papers annexed to the stay application. Learned Single Judge opined appellant had been given adequate

opportunity including personal hearing. There was no violation of principles of natural justice. In the light of such observation, appellant was relegated to the statutory appellate remedy.

3. Having perused the annexures to the stay application, we note from records of proceedings dated 23.02.2023 that the appellant through his representative had undertaken to submit reconciliation statements, copies of agreement with work orders, payments/bill invoices and other relevant documents within seven days to claim benefit of Mega exemption Notification No.25 of 2012 dated 20.06.2012. Annexure P-9 to the stay application shows under cover of letter dated 25.04.2023 appellant submitted relevant documents before the adjudicating authority in support of his plea that the services were exempted from tax in view of the aforesaid exemption notification. However, the adjudicating authority completely glossed over the said documents submitted the appellant/assesssee and hold as follows:-

> *" .....I find that river Protection/Improvement work is not an exempted service as the same not mentioned in the said exemption Notification. Thus, the service rendered is taxable as per documents submitted by the notice. <u>For rest of the services provided in the same table appears to me as taxable, as the said notice have not submitted the copy of the agreement/contract, reconciliation statement, Bill/Invoices and other sufficient/supporting documents. So it is not possible for me to determine the exact nature of service provided and whether they are eligible to get exemption of Service Tax. I am, therefore, is of the considered opinion that the said notice is liable to pay Service Tax on these services</u>."*
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> *(emphasis supplied)*

4. The aforesaid finding clearly demonstrates non-application of mind by the adjudicating authority to the documents submitted by the appellant claiming exemption with regard to the services which were the

subject matter of adjudication. This amounts to a manifest error apparent on the face of the records which has rendered the decision making amenable to judicial review. Existence of alternative remedy is a self-imposed restriction and does not divest a Court of its extraordinary powers under Articles 226 of the Constitution of India.[1] A writ of certiorari is a discretionary remedy and the writ court notwithstanding existence of alternative remedy may in appropriate cases invoke its powers when a manifest error is apparent from the records. In the present case, order of the adjudicating authority discloses patent perversity as the authority held no document was submitted by the assessee to claim exemption though a number of documents had been admittedly filed before the authority concerned.

5. Learned Advocate for the CGST also admits some documents had been submitted by the assessee but had not been considered by the adjudicating authority. He, however, contends reconciliation statements had not been furnished and one of the work orders related to protection/improvement work in river bank which is not eligible for exemption. As the documents submitted by the appellant assessee had not been considered, he submits in the event the assessee deposits 7.5% of the tax assessed in the impugned order, the order may remain suspended and the matter be remanded for fresh reconsideration in light of the documents furnished by the assessee.

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[1] Radha Krishan Industries vs. State of Himachal Pradesh & Ors., (2021) 6 SCC 771

6. In the view of the aforesaid discussion, I am of the opinion there is a manifest error on record which has affected the fairness of the decision making process.

7. Accordingly, I direct in the event appellant/assessee deposits 7.5% of the tax assessed in the impugned order within four weeks from date, impugned order shall remain suspended and the matter shall be remanded to the adjudicating authority who shall decide the matter afresh in accordance with law in light of the documents submitted before the authority after giving opportunity of hearing to the appellant. During the hearing appellant shall also be at liberty to submit reconciliation statements and/or additional documents in support of his plea for exemption under the aforesaid memorandum. Adjudicating authority shall pass a reasoned order within four months from the date of deposit of 7.5% of tax assessed by the appellant, as aforesaid.

8. In the event the appellant/assessee fails to deposit 7.5% of tax liability within four weeks, the impugned order shall stand revived.

9. With these directions, appeal and connected application are disposed of.

10. There will be no order as to costs.

I agree.

(Ajay Kumar Gupta, J.) **(Joymalya Bagchi, J.)**

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