12.06.2024
Ct. No. 02
Sl. No.27
Cp

Calcutta High Court
In the Circuit Bench at Jalpaiguri

WPA No. 875 of 2024

M/s. Sanjeevani Gum Udyog
Vs.
The State of West Bengal & anr.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghna Joshi
Mr. K. Kundu
.....for the petitioner.

Mr. Momenur Rahman
Ms. Rima Sarkar
....for the State.

Mr. Ratan Banik
Mr. Bishwaraj Agarwal

....for the respondent no.2.

1. The writ petition arises out of an order dated March 1, 2024 passed by the adjudicating authority and the following orders were passed.

> " i. I confirm the demand of short paid IGST of Rs.109687/-, CGST of Rs.90931/- and SGST of Rs.2,00,620/- under the Provisions of Section 73 (1) of CGST Act, 2017 r/w relevant provisions of WBGST Act, 2017 and rules made thereunder read with Section 20 of IGST Act, 2017.
>
> ii. I confirm the demand of interest on the aforesaid short paid GST amounts under the provisions of under Section-50 of CGST Act, 2017 read with Rule 88B of CGST Rules, 2017 read with relevant provisions of WBGST Act, 2017 and rules made thereunder also read with Section 20 of IGST Act, 2017.
>
> iii. I impose Penalty of IGST of Rs.10969/-, CGST of Rs.10000/- and SGST of rs.20062/0 under Section-73 (9) of CGST Act,

> 2017 read with relevant provision of WBGST Act, 2017 read with Section 20 of IGST Act, 2017."

2. Learned advocate for the petitioner/assessee submits that the order of the adjudicating authority is bad in law and requires intervention of this court under judicial review. The learned advocate further submits that under the self-same facts and challenging a similar order, WPA No. 88 of 2024 was filed before this court and a learned coordinate Bench was pleased to allow the said writ petition thereby setting aside the order of the adjudicating authority as also the appellate authority.

3. Mr. Lakhotia, learned advocate for the petitioner, contends that while deciding the issue the authorities had failed to take into consideration the GSTR-9C and the learned coordinate Bench, upon recording such non-consideration, had set aside the order of the adjudicating authority as also that of the appellate authority.

4. Pursuant to the direction of this court, the order impugned had been passed by the adjudicating authority and the same has been challenged before this court without availing of the statutory remedy of appeal.

5. According to the petitioner, the Central Board of Indirect Taxes and Customs had issued certain circulars dealing with issues regarding corrections of erroneous details furnished in Form GSTR-3B. It has been stated that the said circular provided that in case the registered taxpayer intended to amend any details furnished in Form GSTR-3B, it could be done either in Form GSTR-1 or Form GSTR-2, as the case may be. The petitioner's contention is that the entries were made on the basis of the said circular, but the authority did not take the same into consideration while passing the second adjudication order.

6. Specific reference has been made to the circular dated January 7, 2022. There are guidelines with regard to recovery proceedings under Section 79 of the GST Act, 2007. Paragraphs 3.2 and 3.3 of the said circular has been relied upon by the petitioner. It is stated that in cases where there were genuine differences between the details of output supplies declared in GSTR-1 and those declared in GSTR-3B, on account of bona fide mistake or typographical error, such errors or omissions could be allowed to be rectified subsequently in GSTR-1 or GSTR-3B as per the provisions of Sub-Section (3) of Section 37 or the

provisions of Sub-Section (9) of Section 39, as the case may be. The circular also took note of cases where the supply could not be declared by the registered person in GSTR-1 for an earlier tax period, though the tax on the same was paid by currently reporting the said supply in GSTR-3B. The details of such supply could be reported by the registered person in GSTR-1 for the current tax period. If there was a mismatch between GSTR-1 and GSTR-3B, an opportunity was required to be provided to the registered taxpayer to explain the difference between the between GSTR-1 and GSTR-3B, if any and for short payment or non-payment of the amount of self-assessed tax liability and interest thereon, before any action under section 79 of said the Act could be taken for recovery of the amount. Thus, in every situation where the amount of tax, self-assessed by the registered person on his outward supply statement, GSTR-1, was found to be short paid or not paid through GSTR-3B returns, the officer was required to send a communication to the registered person to pay up the short amount or explain the reasons for such short payment or non-payment of the self-assessed tax within a reasonable time as prescribed in the communication.

7. According to the petitioner, such procedure was not followed by the adjudicating authority. Petitioner further contends that the mistake was sought to be rectified by filing GSTR-9C, which was also not considered by the adjudicating authority in its proper perspective. On the contrary, the adjudicating authority held that the circular dealt with the procedure to be followed for initiation of a recovery proceeding, but did not speak of dissolving any due tax liability if the same was confirmed. Thus, it is contended that the non-consideration of the circulars in their proper manner as also the GSTR - 9C, amounted to violation of the principles of natural justice and the decision-making process was flawed.

8. It is further contended by the petitioner that the mismatch on account of GSTR- 1 and GSTR - 3B would only be relevant after December 17, 2022, when Rule 88C was inserted to provide a mechanism for dealing with the difference arising between the taxpayer's liability as reported in GSTR - 1 vis-a-vis GSTR - 3B.

9. Heard learned advocates. The order impugned has been passed on remand. The relevant portion of the order of the coordinate Bench, passed in WPA

88 of 2024, is set out hereinbelow for convenience:-

> "It appears from the documents placed before this Court that the petitioner relied upon the GSTR-9C in support of the short payment made by it. The same does not appear to have been considered by any of the respondent authorities.
> In view of the above, the order passed by the adjudicating authority and the appellate authority are set aside. The adjudicating authority is directed to revisit the issue after taking into consideration the GSTR-9C submitted by the petitioner. An opportunity of hearing shall be given to the petitioner place all documents in support of its claim.
> A decision shall be taken at the earliest but positively within a period of eight weeks from the date of communication of this order."

10. Undoubtedly, the court was of the view that the GSTR-9C, in which the mistake in making a short deposit of tax was sought to be rectified by the petitioner, had not been taken into account. Further, the circular of the Central Board of Indirect Taxes and Customs with regard to grant of an opportunity of hearing to the registered taxpayer to explain the difference between GSTR-1 and GSTR-3B was also required to be given. Accordingly, the earlier order of adjudication and the order of the appellate authority were set aside.

11. The matter once again went back for decision. From the discussion and findings of the adjudicating authority, it appears that a detailed order has been passed upon hearing the petitioner.

The law has been applied and the contentions of the petitioner, including the contents of GSTR-9C had been clearly discussed and dealt with. The fact that the eligible input tax credit in the month of September 2017 was not claimed and an erroneous adjustment of the same by reducing the self-assessed tax liabilities in GSTR-3B for October 2017 was made by the petitioner, is not disputed.

12. Even the High Court had recorded that the petitioner admitted to have made a short deposit of tax, due to inadvertence. The adjudicating authority held that the High Court had directed that GSTR-9C and circular No. 20/16/05/2021-GST/23, was to be taken into consideration. Upon such direction, the authority considered the GSTR-9C for the Financial Year 2017 - 2018, dated January 31, 2020. It was found that the taxpayer had declared the tax liability to be Rs. 41,85,093/- IGST.

13. The circular was not found to be applicable in the present case. Accordingly, it was held as follows:-

> “Para 3.3- "Accordingly, where ever any such amount of tax, self-assessed by the registered person in his outward supply statement GSTR-1 is found to be short paid or not paid by the said person through his GSTR 38 return in terms of the provisions of sub-section (12) of section 75 of the Act, the proper officer may send a

communication (with DIN, in terms of guidelines issued vide circular No. 12214112019-GST dated 5th November 2019) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication. If, the concerned person is able to justify the differences between GSTR-1 and GSTR 38, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiateproceedings for recovery under section 79. This para explores the possibility of short payment of tax and advises non initiation of recovery under Section 79 of the said Act if such short paid/not paid tax amounts are subsequently discharged.

Para 3.4- However, if the said registered person either fails to reply to the proper officer, or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communications or such further period as may be permitted by the proper officer, then the proceedings for recovery of the said amount as per provisions of section 79 may be initiated by the proper officer. Further, where the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction ofthe proper officer, then the proper officer may proceed for recovery of the said amount as per provisions of section 79.

This closing para of the said circular conclusively conveys proceeding of recovery process if the taxpayer fails to make payment of such amount of tax short paid or not paid.

This circular, very much in its objective, deals with hearing the point of the taxpayer before initiating any recovery proceeding and nowhere speaks of dissolving any due tax liabilities if confirmed. The taxpayer, as elaborated in impugned order dated 10.11.2022 and in above paras, has themselves accepted not paying the self assessed declared tax liability through GSTR 3B of October 2017 even when the saine was expressed in corresponding GSTR I return.

3.5 Accordingly from the above discussion and statutory provisions it is evident that the said RTP as short paid self assessed IGST liability of Rs.109687/-, CGST liability of Rs.90931/- and SGST liability of Rs. 2,00,620/- of October-2017 violating the provisions of Section 39, Section 49, Section 59 of the CGST Act, 2017 read with Rule 61(3) & 61(5)of CGST Rules 2017 r/w relevant provision of HGST Act, 2017 and rules made thereunder read with Section 20 of IGST Act, 2017 and such short paid GST liabilities are recoverable from the said RTP under Section 73(1) of CGST Act, 2017 along with appropriate interest under Section-50 of CGST Act, 2017 read with Rule 88B of CGST Rules. 2017 read with relevant provisions of WBGST Act, 2017 and rules made thereunder also read with Section 20 of IGST Act, 2017. Penalty is also imposable on them under Section 73(9) of CGST Act, 2017 read with relevant provisions of WBGST Act, 2017 read with Section 20 of IGST Act. 2017 for non-payment of self assessed IGST liability of Rs. 109687/-, CGST liability of Rs.90931/- and SGST liability of Rs.2,00,620/- of October-2017 violating the provisions of Section 39, Section 49, Section 59 of CGST Act, 2017 read with Rule 61(3) & 61(5) of CGST Rules, 2017 r/w relevant provision of WBGST Act, 2017 and rules made thereunder read with Section 20 of IGST Act, 2017”

14. The authority had applied the law, the facts, the declarations under 9 and 9C, and arrived at the conclusion that the petitioner had failed to pay the tax, as required under the statute and there was a short deposit of tax.

15. Under such circumstances, scope of judicial review is limited. Unless the petitioner is able to satisfy that the authority had acted beyond jurisdiction or had failed to apply the law or the order suffered from perversity and error apparent on the face of record, the correctness of the order vis-à-vis the law and the evidence discussed, cannot be decided in the writ petition. The writ court is not a court of appeal. The writ petition is disposed of, granting liberty to the petitioner to prefer the statutory appeal in accordance with law.

16. Accordingly, the writ petition is disposed of. However, there will be no order as to costs.

17. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)