Item No.23
19.06.2024
Court. No. 2
GB

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION

WPA 1124 of 2024

Subrata Roy
VS
Assistant Commissioner of Revenue, Bureau of Investigation, North Bengal HQ & Ors.

Mr. Boudhayan Bhattacharya,
Ms. Stuti Bansal,
Ms. Abhishruti Basu
... for the Petitioner.

Mr. Pretam Das,
Mr. Dilip Kumar Agarwal
... for the State.

Mr. Ratan Banik,
Mr. Biswaraj Agarwal,
Mr. Saptarshi Banik
... for the Respondent Nos.6 to 8

1. The writ petition has been filed by a registered tax payer (RTP), who is the proprietor of M/s. City Marble. A search was held in the business premises of the petitioner by a team from the Bureau of Investigation, North Bengal Headquarters under Section 67(1) of the GST Act, 2017. Both the petitioner and his son were intimated about the purpose of the visit and the official identities of the team were disclosed. The petitioner disclosed that he dealt in the business of inward and outward supply of tiles, marbles, granite and sanitary wares and fittings. The said premises was the registered

place of business and another warehouse was located at Rupshing, Bagdogra. The RTP used tally software for maintaining their books of accounts. Within the said premises, another firm with the trade name M/s. WRAPS also existed, which was registered in the name of the petitioner's son.

2. The petitioner was asked to produce all the books of accounts, etc., with regard to the business of marble and granite. Certain documents were produced by the petitioner during the search. The documents were taken and physical stock of the business was also taken. Such search was held on December 29, 2022 and an intimation was given to the petitioner on the said date asking him to produce some documents by December 30, 2022. The petitioner contends that after 11 months from such search, a preliminary report was prepared by the authority in the matter of Enforcement Case ID No.AD19222014633F dated December 29, 2022.

3. It appears from the said report that the RTP was given several reminders for appearance, but he failed to do so. Stock difference was detected. Tax was found to have been suppressed. The tax involvement on the tax difference, that is, the tax payable was found to be Rs.37,58,888.41/-. The RTP was asked to go through the said report and file a written submission or pay up the money

voluntarily. Thereafter, the petitioner filed a written submission and the contention of the petitioner was not accepted by the authority. A final order was drawn by the authority which is at page 37 to the writ petition. Thereafter, a proceeding under Section 74 of the GST Act, 2017 was initiated being Adjudication Case No.AD1912230102799 dated December 15, 2023. The tax payable by the petitioner was adjudicated as Rs.37,54,480.84/- and interest component was Rs.9,50,655.12/-.

4. The petitioner has preferred a statutory appeal. During the pendency of the statutory appeal, the petitioner has filed the writ petition challenging the search, the preparation of the preliminary report after 11 months from the said search and alleges that such belated initiation of proceedings were contrary to the provisions of the Act and the circulars.

5. The contention of the petitioner is that, unless the reason to believe that a search of such nature was required in the business premises of the petitioner, either on the ground of suppression of tax payable or on the ground of suppression of the stocks and such reason was reflected in the order of such search, the proceedings based on such illegal search could not be allowed to stand.

6. Both the learned advocates for the GST authorities have submitted that at the investigation stage itself, a difference in the book stock and physical stock had been found. Preliminary report and final report had been prepared. Petitioner had been given more than nine chances to support his case and submit all papers justifying the physical stocks. Thereafter, proceeding as per law was held and an appeal is pending.
7. In my opinion, there is no reason to interfere at this stage. The alternative remedy of appeal has been availed of. Whether the search had been in accordance with law or as per the circular mentioned by Mr. Bhattacharya, learned advocate for the petitioner and whether such issue had been dealt with in the adjudication, are matters which will be decided in the appeal. The reasons for holding the search and the procedure followed during the search, are points to be decided in the appeal and the petitioner is at liberty to take all these additional grounds in the appeal.
8. This Court is not inclined to make any observation on the issues raised in this writ petition. All points are kept open to be decided in the appeal.
9. Accordingly, the writ petition is disposed of.
10. However, there will be no order as to costs.

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

(Shampa Sarkar, J.)