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22.05.2024.
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 1640 of 2022
M/s. Ever Green
-versus-
Senior Joint Commissioner, Sales Tax, Siliguri Circle & Ors.

With

WPA 2831 of 2023
Surendra Kumar Periwal
-versus-
Assistant Commissioner of State Revenue (SGST), Siliguri Charge, Siliguri & Ors.

Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal,
Mr. Abhishruti Basu
….for the petitioner.
Mr. Subir Kumar Saha,
Mr. Dilip Kumar Agarwal
….for the State.

Mr. Ratan Banik,
Mr. Bishawaraj Agarwal,
Mr. Ranjan Raj,
Mr. Saptarshi Banik
….for the respondent nos.4 & 6 in WPA 2831/23.

The petitioner has filed the writ petition, being WPA No. 1604 of 2022, challenging the order of the Appellate Authority dated 30th May, 2022 which was communicated vide Memo no. 303/SGC by which the Appellate Authority has upheld the Order no. ZD190921004624G dated 06.09.2021 pertaining to eligibility to claim Input Tax Credit (in short ITC) by the petitioner for the period 1st April, 2018 to 31st March, 2019. The petitioner has also prayed for other consequential reliefs on the basis of the aforesaid main relief.

The petitioner has filed another writ petition, being WPA 2831 of 2023, on 29th November, 2023 in which the petitioner has challenged the same order as also the demand notice made pursuant to the appellate order dated 30th May, 2022 by issuing GST APL 04. The petitioner says that the petitioner has been advised to withdraw the writ petition being WPA 1640 of 2022 filed on 6th July, 2022 and pursue the writ petition, being WPA 2831 of 2023, filed on 29th November, 2023.

In the two writ petitions, the petitioner has challenged the same order. However, in WPA 2831 of 2023, the petitioner has challenged the demand notice issued in terms of the appellate order apart from the appellate order itself.

Although there is a vehement opposition from the side of the revenue that two writ petitions on the self-same ground are not maintainable and as such, the writ petitions are required to be dismissed, but I find that carriage of proceedings is with the petitioner and justice will be sub-served if I allow the petitioner to withdraw the writ petition, being WPA 1640 of 2022 and pursue the writ petition, being WPA 2831 of 2023.

In the aforesaid facts and circumstances, on the prayer of the writ petitioner, WPA 1640 of 2022 is dismissed as withdrawn by permitting the petitioner to proceed and pursue the writ petition, being WPA 2831 of 2023.

In Re: WPA 2831 of 2023

The main grievance of the petitioner is that the challenge to the order of the appeal and the demand notice issued in terms of the said appellate notice dated 30th May, 2022 cannot be assailed as the Tribunal having jurisdiction to entertain the second appeal from the order dated 30th May, 2022 has not been set up. The petitioner says that the petitioner cannot be left remediless in absence of the forum and as such has preferred this writ petition.

The petitioner says that the Division Bench of this Court has also in a like situation, has passed an order on 12th May, 2023 in ***Jai Venktesh Concast Private Limited & Anr. vs. Deputy Commissioner State Tax, ITC Investigation Unit and Ors.*** reported in ***(2024 122 GSTR 59 (Cal)*** wherein the Hon'ble Division Bench has restrained the revenue from initiating any coercive step for recovery till disposal of the writ petition and have also set aside the condition imposed by the learned Single Bench directing the assessee to deposit 20 per cent of the deposited tax.

The petitioner says that following the said judgment, a Coordinate Bench in M/s. G.L. Kundu & Sons Steel Private Limited vs. Deputy Commissioner State Taxes, Central Section, Siliguri & Ors. reported in (2024) 122 GSTR 62 (Cal) (SB) has passed an order in the similar line. The operative portion whereof is set out hereunder:

> "WPA 2462 of 2023 is disposed of by passing the following orders- (a) the period of filing the appeal by the petitioner will stand extended as indicated in Clause 4.2 of the Circular dated 18th March 2020; (b) the order impugned in this writ petition shall not be given effect to until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular dated 18th March 2020 is over."

The petitioner invites this Court to pass the same order as in G.L. Kundu (supra)

On behalf of the revenue, the prayer of the petitioner is objected to. It is submitted that the Division Bench while hearing the appeal had only passed an interim protection to the assessee and had kept the writ petition pending to be heard on merits. That apart and in any event, the ratio laid down in Venktesh (supra) is only in the peculiar facts and circumstances of that case which is not the same as in the case in hand.

On behalf of the revenue, it is further submitted that the ratio in M/s. G.L. Kundu (supra) is also not applicable to this case. As in the said case, the writ petition was disposed of by granting an interim protection to the assessee. The said order has been appealed against and is pending adjudication.

After hearing the parties and considering the materials on record as also the judgments cited at the bar, I am inclined to follow the path laid down in Jai Venktesh (supra). The respondents and each one of them are restrained from taking any steps or coercive steps in terms of the demand notice being GST APL 04 issued in terms of the Appellate Order dated 30th May, 2022 till the disposal of this writ petition. The respondents are also directed to forthwith remove the order of attachment on the bank account of the petitioner, if any such steps have been taken in the meantime in terms of the demand notice issued pursuant to the Appellate Authority dated 30th May, 2022.

The petitioner will be also at liberty to file an appeal against the order dated 30th May, 2022 in terms of Section 112 of the WBGST Act, 2017 before the GST Tribunal if the same is constituted during the pendency of the writ petition.

The petitioner in that case after preferring the appeal will be entitled to withdraw the writ petition and seek interim protection before the Appellate Tribunal.

Let affidavits be filed. Affidavit in opposition affirmed and filed by 28th June, 2024. Reply, if any, by 11th July, 2024.

The parties will be at liberty to mention the matter for inclusion in the list before the Circuit Bench commencing from 1st July, 2024 subject to its convenience.

(Arindam Mukherjee, J.)