88
03.01.2024
Ct. No.1
Sws.m

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

MAT 181 of 2023
CAN 1 of 2023

Dipak Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Himangshu Kr. Roy
Mr. Abhilash Mittal
...for the petitioner

Mr. Dilip Kumar Agarwal
..for the State.

Heard Mr. Himangshu Kr. Roy, learned counsel for the appellant and Mr. Dilip Kumar Agarwal, learned counsel for the State-respondents.

The appellant is a contractor. He is registered under the CGST Act/ WBGST Act. For the Tax period 2018-2019, the assessment was completed by the assessing officer and tax was imposed. Aggrieved with the assessment order, the appellant herein filed an appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 before the appellate authority which was dismissed by an order dated 08.06.2023. The plea taken by the appellant that the tax has not been paid by the concerned Government department to the appellant and as such he is not liable to pay the tax was rejected by the first appellate authority on the ground that non-payment of tax does not absolve an assessee from his obligation and liability to pay tax.

Aggrieved with the order of the first appellate authority, the appellant filed a writ petition being WPA No. 2127 of 2023 (Dipak Sarkar vs. The State of West Bengal and Ors.) which was dismissed by an order dated 15.09.2023 passed by the learned Single Judge.

Aggrieved with the aforesaid judgment and order of the learned Single Judge, the appellant herein filed the present appeal.

The only submission of learned counsel for the appellant before us is that since the contract was awarded in Pre-GST regime but the work was executed in Post-GST regime which resulted in liability to Goods and Service Tax but the concerned Government department (Contractee) has not paid the GST, therefore, the appellant is not liable to pay the tax assessed. He further submits that a direction may be issued to the respondent/concerned department/ contractee, to pay GST to the petitioner.

Learned State advocate has supported the impugned judgment and order passed by the learned Single Judge.

We have carefully considered the submissions of the parties and perused the record of this appeal.

Event of taxation under the GST Act is the supply of goods or services. Undisputedly, the event of taxation has occurred resulting in liability to tax and accordingly assessing officer has assessed the liability to tax of the appellant. We repeatedly asked the learned counsel for the petitioner to show any illegality in the impugned assessment order with regard to the assessment of liability to tax and learned counsel for the appellant has stated before us that there is no illegality in the assessment order in so far as the determination of liability to the tax is concerned, but the grievance of the appellant is that since tax has not been paid by the contractee, therefore, the tax imposed to the extent of non-payment by the contractee, be not recovered from the appellant.

We are unable to accept the submission of learned counsel for the appellant in as much as the GST Act is a complete code in itself and payment of tax is not subject to realization of tax by an assessee. Under the circumstances, we do not find any manifest error of law in the impugned judgment and order passed by the learned Single Judge.

For all the reasons aforesaid we do not find any merit in this appeal. Consequently, the appeal along with the application is **dismissed**.

After the judgment was dictated in open Court, learned counsel for the appellant submits that liberty may be granted to the appellant to raise his objection before the concerned contrectee authority or to institute appropriate proceeding in a competent Court of law for realisation of the amount due from the concerned contractee department. We do not wish to make any comment on this submission and leave it open for the appellant/petitioner to take all appropriate action or submit a representation for redressal of his grievance for non-payment of any amount by the contrectee/Government Department, as may be permissible under law.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Surya Prakash Kesarwani, J.)

(Rai Chattopadhyay, J.)