08.01.2024
Item No.24
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WPA/2472/2023
JITENDRA NATH ROY
VS
ASSISTANT COMMISSIONER OF REVENUE COMMERCIAL TAXES (SGST), SILIGURI CHARGE & ORS.

Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal
..for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Dilip Kumar Agarwal
..for the State.

Mr. Ratan Banbik,
Mr. Bishwaraj Agarwal,
Ms. Deepika Gupta
..for the Respondent Nos.4 and 6.

The order of the Joint Commissioner, State Tax, Siliguri Circle, Siliguri dated 8th September, 2023 is under challenge in this writ petition.

By the order dated 8th September, 2023 the appellate authority held that at the time of availing the ITC the petitioner herein was not eligible for the same and the ITC so availed and utilized is required to be reversed.

Mr. Bhattacharyya, learned advocate appearing for the petitioner draws the attention of the court to an observation of the appellate authority at page 51 of the writ petition wherein it appears that the appellate authority upon analysis of GSTR 3B details of the supplier, namely, Tuhin Kanti Chowdhury from the back office portal has observed that the supplier has filed GSTR 3B for the period of January to March, 2020 as NIL.

Mr. Bhattacharyya, learned advocate for the petitioner refers to the copies of return in Form GSTR 3B of the supplier of the petitioner, namely, M/s. Tuhin Kanti Chowdhury which has been annexed to the writ petition and submits that the said supplier of the petitioner filed his return for the period of January to March, 2020 on 17th March, 2020.

He submits that the appellate authority did not take into consideration the return filed by the supplier of the petitioner for the period of January to March, 2020 while passing the order dated 8th September, 2023.

Heard Mr. Agarwal, learned advocate appearing for the State on such submission.

Mr. Agarwal, learned advocate, in his usual fairness, submits that in the event the petitioner is able to satisfy the authority that the said supplier of the petitioner has in effect filed the return for the month of January, 2020, then the petitioner should be entitled to the benefit of ITC.

This court cannot decide as to the authenticity of such documents and also as to whether the petitioner can be extended the benefits on the documents which has been annexed in the writ petition.

For the reasons as aforesaid, this court is of the considered view that the interest of justice would be sub-served if the petitioner is given liberty to produce documents in support of his claim and the appellate authority is directed to re-visit its order dated 8^{th} September, 2023.

In the event petitioner approaches the appellate authority with the documents in support of his claim along with server copy of this order, the appellate authority shall re-visit the order dated 8^{th} September, 2023 only to the limited extent which pertains to ITC claimed in respect of supplier of the petitioner, namely, M/s. Tuhin Kanti Chowdhury for the relevant period.

It is, however, made clear that the appellate authority shall be at liberty to examine the genuineness and authenticity of the documents of the supplier of the petitioner, namely, M/s. Tuhin Kanti Chowdhury and upon being satisfied shall pass a reasoned order in accordance with law. Such reasoned order in terms of this order shall be passed within a period of six weeks from the date of submission of the documents by the petitioner in terms of this order.

With the above observations, the writ petition stands disposed of.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)