04.01.2024
Item No.16
gd

WPA/2889/2023
SANDEEPG REAL ESTATE LIMITED & ANR.
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Bikramaditya Ghosh,
Mr. Anup Bhattacharya,
Ms. Supriya Singh
..for the Petitioners.

Mr. Joyjit Choudhury, ld. Addl. AG,
Mr. Subir Kumar saha,
Ms. Rima Sarkar
..for the State.

Affidavit of service filed in court today is taken on record.

The petitioners have challenged an order of the Senior Joint Commissioner of Revenue, Commercial Taxes, Siliguri Circle, being the appellate authority, dated June 21, 2023 and have prayed for setting aside the original demand notice demanding interest dated 17th November, 2022 and for a direction upon the respondent authorities to refund the alleged excess amount recovered by way of debiting the bank account of the petitioners pursuant to the garnishee notice dated March 30, 2023.

The writ petitioner no.1, being a Real Estate Company, opted for taxation structure under the new scheme and was paying GST at the rate of 1% to 5%

(combined) on the consideration collected after 1st of April, 2019.

The petitioners claim that they have been regularly filing their returns and adhering to the compliance under the GST Act. The petitioners opted for the new scheme for one of its ongoing projects, namely, "Mayfair Greens-Phase II" and computed the ITC reversal vis-a-vis such project. The petitioners applied for ITC reversal in 24 equal installments along with appropriate interest.

It is the case of the petitioners that the facility to file Form DRC-20 was not available on common portal for which the petitioners submitted an application for installment under the new scheme in physical mode by manually submitting GST DRC-20 on October 14, 2019.

The petitioners claim that the concerned respondent authority afforded opportunity to the petitioners on several occasions on the issue of grant of installments but no final decision was communicated to the petitioners.

The petitioners claim that initially a demand of interest of Rs.22,90,977/- for the period 2018-19 was raised by the respondent authority and the petitioners being aggrieved by such demand applied for rectification and re-rectification of such order.

Pursuant to such application for rectification, a rectified order was passed on 6th July, 2022 with the rectified demand of interest for Rs.18,50,254/-.

Being aggrieved by the rectified demand, petitioners preferred an appeal on March 27, 2023 which stood rejected by the order of the appellate authority dated June 21, 2023, which is impugned in this writ petition, on the ground that the appeal was not preferred within the specified time frame as well as the extended time limit.

Mr. Ghosh, learned advocate appearing for the petitioners refers to various observations of the Assistant Commissioner, Siliguri Charge in support of his contention that the respondent authority was of the view that the petitioners were eligible to apply for the installment facility. He further refers to another observation of such officer that the taxpayer is financially able to opt for the installment facility.

By placing reliance on such observations of the Assistant Commissioner, Siliguri Charge, Mr. Ghosh contends that the respondent authority has accepted the contention of the petitioners that the petitioners are entitled to installments.

He further submits that non-communication of the final decision on such issue led to the delay in ITC reversals which ultimately resulted in escalation of interest on such amount.

Mr. Ghosh, learned advocate appearing for the petitioners submits that in the event the authorities had taken a decision on the prayer for installment facility within a reasonable time, the liability to pay the interest as demanded vide the rectified order of demand would not arise.

Mr. Chowdhury, learned Additional Advocate General submits that no final decision on the prayer of the petitioners for ITC reversal in installments was taken and, therefore, it cannot be said that the respondent authority had accepted the prayer of the petitioners for ITC reversal by installments.

He further submits that pursuant to the application for rectification and re-rectification, the respondent authorities passed a rectified order of demand and, therefore, this court sitting under Article 226 of the Constitution of India should not interfere with such demand raised by the authority.

Mr. Chowdhury submits that the petitioners preferred an appeal beyond the time limit stipulated under the statute and such appeal was not accompanied by any prayer for condonation of delay and, therefore, the appellate authority cannot be faulted for dismissing the appeal on the ground that it was time barred.

Heard the learned advocates for the parties and perused the materials placed.

The Notification No.03/2019-Central Tax (Rate) New Delhi, 29th March, 2019 issued by the Government of India, Ministry of Finance, Department of Revenue, more particularly clause (d) of Paragraph 1 under Annexure-II read with the explanation thereto states that the Commissioner may issue an order in FORM GST DRC-21 allowing the taxable person further time to make payment and/or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

Mr. Ghosh, learned advocate appearing for the petitioners submits that once an application for installment is made the Commissioner is obliged to allow such prayer.

However, upon a reading of the explanation it, prima facie, appears to this court that the expressions “may” and “as he may deem fit” makes the said explanation a discretionary one and not mandatory as urged by Mr. Ghosh.

This court is, therefore, of the prima facie view that a discretion is left with the Commissioner either to allow or reject a prayer for installment.

Even if the Commissioner exercises his discretion to allow installments, it is also open to the Commissioner to decide as to the number of installments.

The petitioners claim that they are entitled to 24 installments in terms of the notification dated 29th March, 2019 and therefore a direction for refund of amount recovered in excess is to be passed.

A taxable person cannot claim a vested right to installments in view of the said notification.

In so far as the reliance on the observations of the Assistant Commissioner, Siliguri Charge is concerned, it appears to this court that the same was only tentative observations which was subject to the final decision of the Commissioner.

It is not in dispute that no final decision with regard to the prayer of the petitioners for grant of installments for ITC reversal was communicated. When the taxable person applied for installments, it was open to the commissioner to take a final decision on the same either by allowing or by rejecting such prayer but such authority could not have kept such issue pending which ultimately resulted in prejudice being suffered by the petitioners due to the inaction on the part of the respondents.

Mr. Ghosh, learned advocate appearing for the petitioners is right in contending that such delay caused prejudice to the petitioners as the delay in ITC reversal resulted in escalation of interest.

This Court is of the considered view that non-communication of the decision on the prayer of the petitioners for installment facility amounts to gross violation of the principles of natural justice.

The moot question is whether the petitioners would be liable to pay interest as demanded by the authorities vide the rectified order of demand. A decision on such issue would depend upon the decision taken on the prayer of the petitioners for installments.

It appears from Page 129 of the writ petition that the petitioners have given a detailed calculation of interest on the basis of the installments claimed by him. The petitioners contend that the petitioners are entitled to a refund of Rs.10,69,217/- The issue as to whether the petitioners will be entitled to refund of the aforesaid amount or part thereof would depend upon the decision of the authority as to whether the prayer of the petitioners for grant of installments is allowed or not.

Since it does not appear from the record that any decision has been communicated to the petitioners on their prayer for installment, this court is of the considered view that the appellate authority should be directed to consider as to whether the petitioners were entitled to ITC reversal by installments and decide the same by passing a reasoned order and thereafter decide as to whether the rectified demand dated 6th July, 2022 can be sustained by assigning reasons.

In view of the peculiar facts of this case as narrated hereinbefore, this court is of the considered view that the appellate authority should be directed to decide the appeal on merits.

For the reasons as aforesaid, the order of the appellate authority dated 21st June, 2023 is set aside.

The appellate authority is directed to hear out the appeal on merits and in accordance with law. The appellate authority shall first decide as to whether the petitioners were entitled to ITC reversal by way of installments as claimed by him vide letter dated 17th November, 2022 and thereafter decide as to whether the rectified demand dated 6th July, 2022 can be sustained by passing a reasoned order.

Needless to mention that the petitioners herein shall be afforded adequate opportunity of hearing and the petitioners shall be at liberty to rely upon Government Orders/Notifications/Judicial decisions in support of their contention for grant of installments.

The appellate authority is directed to dispose of the appeal as expeditiously as possible but positively within a period of one month from the date of receipt of the server copy of this order without granting any unnecessary adjournments to either of the parties.

Since no affidavit has been called for, the allegations contained in the writ petition shall not be deemed to have been admitted by the respondents.

With the above observations, WPA 2889 of 2023 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.)