08.04.2025
Item No.4
gd/ssd

FMA/431/2024
ENKEBEE INFRATECH INDIA PVT. LTD.
VS
THE COMMISSIONER OF STATE TAX AND ORS.
IA NO: CAN/1/2024

Mr. Atish Dipankar Ray,
Mr. Soumyajit Mishra
..for the Appellant.

Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

1. This intra court appeal is directed against the order dated 8th January, 2024 in WPA 25121 of 2023.

2. The said writ petition was filed by the appellant challenging an order of adjudication dated 27th July, 2023.

3. The learned Single Bench dismissed the writ petition on the ground that there are appellate remedy available and the writ petitioner has to avail such remedy.

4. Aggrieved by such finding, the present appeal has been filed.

5. The matter was heard by this court on several dates and affidavit-in-opposition has been filed by the respondent nos.1, 2 and 3. A supplementary affidavit has been filed by the appellant/assessee along with the enclosures as well as the short notes of arguments on behalf of the appellant.

6. After we have elaborately heard the learned advocates for the parties, the short issue which falls for consideration is with regard to the four discrepancies which have been pointed out by the department in the final order of adjudication dated 27th July, 2023 in page 9 which is depicted in a tabulated format.

7. In the case on hand the matters listed in serial nos.6, 7, 8 and 9 of the tabulated statement alone are in dispute. So far as the 6 and 7 are concerned, according to the department, IGST was taken and utilized in GSTR-9 and the reason given by the appellant is that they have utilized this amount in the GSTR-9. Similar is the allegation in respect of serial no.7. According to the appellant/assessee, the same stands reflected in the GSTR-9 and only the GSTR-3B it was not reflected.

8. In our view, this aspect can be verified departmentally by various means and the matter need not linger further before this court as any further delay will not be in the interest of revenue.

9. So far as the serial nos.8 and 9 are concerned, the allegation is difference of taxable value of invoice. The reason given is the taxable value of invoice certified by recipient to be less than what was raised by the instant recipient.

10. The learned advocate for the appellant has referred to the GSTR-2A which shows the filing status of GSTR-3B of the respective recipients.

11. Therefore, this issue also can be verified by the department in the portal and, therefore, the matter requires to be remanded back to the adjudicating authority for a fresh decision in the matter only concerning the above four items as mentioned in the tabulated statement in page 9 of the adjudication order, namely, serial nos.6, 7, 8 and 9.

12. Accordingly, the appeal is partly allowed and the findings rendered in the adjudication order dated 27.7.2023 in so far as it relates to serial nos.6, 7, 8 and 9 are set aside and the matter is remanded back to the adjudicating authority for a fresh decision. The adjudicating authority shall give an opportunity of personal hearing to the authorized representative of the appellant, perused all the documents and records that they may produce and after passing complete verification of all details, the adjudicating authority shall take a fresh decision on merits and in accordance with law only on the above four issues.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)