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10.02.2025

WPA 2520 of 2025

LGW Industries Limited
Vs.
Assistant Commissioner of Revenue, State Tax & Ors.

Mr. Vinay Shraff
Mr. Dev Agarwal
Mr. Rahul Parasrampuria
… … for the petitioner
Mr. A. Ray
Md. T.M. Siddiqi
Mr. T. Chakraborty
Mr. S. Shaw
Mr. S. Sanyal
… … for the State

Learned counsel appearing for the petitioner submits that a show cause notice has been issued to the petitioner and on the basis of the said show cause notice an adjudication order was passed on 19.07.2024.

Learned counsel challenges the adjudication order on the following three grounds :-

(i) That the adjudication order was passed without giving an opportunity of hearing.

(ii) That the adjudication order was passed without granting opportunity to file written notes of reply by the petitioner.

(iii) That the petitioner prayed for cross-examination, to those whose statements have been relied upon while passing the adjudication order.

Learned counsel further prays for quashing of the adjudication order passed on 19.07.2024 for the financial year 2020-21.

Learned counsel appearing for the respondent authorities relies upon the adjudication order which reads as follows :

"**Evaluation of the Reply to the issued show cause notice by the RTP for the period April, 2019 to March, 2020 & April, 2020 to March, 2021**

As per the provision of Section 74(1) of WBGST Act, 2017, a show cause notice in FORM GST DRC-01 vides reference no. ZD190424017059E dated: 09/04/2024 & ZD190424023910K dated: 15/04/2024 for the period April, 2019 to March, 2020 & April, 2020 to March, 2021 respectively allowing the chance to show cause as to why the RTP should not pay tax as ascertained after deducting the amount already paid voluntarily for the said period by 29.04.2024. But on 21-05-2024 a reply was received from the RTP with the request to extend the date of hearing for a month because their learned advocate would be busy in attending the audit of accounts. Accepting the prayer the date of submission of reply was adjourned to.

In its reply dated 21-05-2024 without contending the issues/observations mentioned in the issued show cause notice the RTP only highlighted the point of allowing the scope of Cross verifications for effectively defend themselves against the persons and submit reply to the intimation of DRC 01.

It has been mentioned by the RTP in its reply that as essential element of natural justice the scope of cross examination of the following witnesses, whose statements have been relied upon to support the allegation, should have been provided:

i) Sri Tapan Kr. Deb (Partner of Arrow Roadlines)

ii) Sri Gopal Saha (Proprietor of M/s Overseas Transport Company)

iii) Sri Manoj Kumar Gupta (broker/commission agent for transport agencies, Controlled ROYAL INTERNATIONAL, MITRA TRADERS, SKYLARK TRADE CENTRE, BALAJI TRADING COMPANY, BLUE DELL ENTERPRISE, CLASSIC TRADERS)

iv) Md. Javed (Contractual staff of M/s LOW Industries Limited)

v) Sri Pramod Panda (claimed to be proprietor on record of SKYLARK TRADE CENTRE but was a priest in Manoj Kumar Gupta's house)

vi) Sri Debjit Roy (incharge of godown at Bongaon of LGW Industries)

vii) Sir Sudhamoy Dutta (partner of Aero Roadlines and Dutta Roadways)

viii) The name of Sri Manoj Kumar Gupta (already mentioned in serial no. (iii)) has been repeated again here.

Contention of the reply of the RTP i.e. the right to cross examine the witness as a scope of natural justice is considered below:

Sri Sudhamoy Dutta has been wrongly mentioned in the reply of the RTP as the partner of Aero Roadlines, But Sri Dutta was the partner of Dutta Roadways only. This is to mention here that a joint hearing was conducted in presence of Sri Tapan Kr. Deb, the partner of Arrow Roadlines and Sri Sudhamoy Dutta partner of Dutta Roadways in presence of the authorised representatives. During hearing both of them produced some documentary evidences in support of their statements. Hence the issue of cross examination is not applicable here.

Verification at Narayanpur, Tentulia, P.O.-Rajarhat Gopalpur, Kolkata-700136, the place of business M/s Overseas Transport Co. was initiated by the officers of BISB on the basis of the submission of the RTP that "...actual exports of the goods to Bangladesh were occasioned through the transporter named M/s Oversease Transport Company" and submission of some tampered documents (Road challan of export cargo along with bills of M/s Oversease Transport Company) by one of the owners of the vehicles (WB25E7614/WB25E7613/WB25D2702), Sri NIRMAL RAHA who during his declaration against the issued Summon U/s 70 of the Act stated that in those documents where the movements of the vehicles from Bongaon to Benapole were overwritten to show the movements as Kolkata to Benapole via Bongaon were received from you. But Sri Raha later stated his vehicles only transferred goods from your Bongaon godown to the Benapole, Bangladesh. During the verification Sri Gopal

[5:24 pm, 10/2/2025] □ □ Saha, the proprietor of M/s Overseas Transport Company stated that "... he had a very cordial relation with late Amit Gupta, brother of Sri ABHAY KUMAR GUPTA, one of the directors of LGW Industries Limited for about 30 years" and " a bank account has been opened in the name of Overseas Transport Company in Central Bank Of India at its Narayanpur branch (having account number: 1737611325) as per the instruction of late Sri Amit Gupta... signed the blank cheques of the bank account as instructed by Sri Gupta... did not have any control over the account and the transactions through it."

Though the matter was not directly connected with the verification related to the veracity of the RTP and its claim of ITC from the said suppliers, the facts were the indicative to understand the process of manipulation of the RTP with respect to the export of goods having an indirect connection with its modus operandi. The authorised representative of the RTP and the directors of the RTP were intimated about the statement of Sri Gopal Saha, and the details of which were mentioned in the show cause notice issued. The RTP having a 'very cordial relation' with the said proprietor of M/s Overseas Transport Company should have submitted its rebuttal or contrary contentions with documentary evidence. Hence the requirement of cross examination in this respect is not at all required.

A request was sought to the RTP through its registered mail to present both Md. Javed, the person in charge of its godown at 135, Canning Street, Kolkata-700001 and Sri Debjit Roy (alias Kalu Roy) in charge of the godown 3 no. Tali Khola, Kuti Bari, Bagdah Road, Bongaon, North 24 Parganas for a joint hearing along with any other employee/(s) related to the receipt of inward supplies from the claimed suppliers of the RTP with relevant books of accounts or documents maintained at the two godowns. Statements of both the persons were recorded in presence of the authorised representative of the RTP. Hence the issue of cross examination is not applicable here.

The statement of Sri Manoj Kumar Gupta, broker/commission agent was also recorded against issued Summon as per the provision of the Act. The recording of the statement of Sri Gupta was felt necessary in connection with the declarations of some of his staffs like Sri Rupesh Kumar Sing, Sarsa Venugopal, Sri Arvind Kumar Yadav, Sri Niraj Kumar Yadav. The connection of Rupesh Kumar Sing with the bank account of the suppliers of the RTP divulged the course of the investigation and the declarations of the staffs of Sri Manoj Kumar Gupta exposed the real control of Sri

Gupta over the bank accounts of the suppliers of the RTP. Hence the declaration of Sri Manoj Kumar Gupta is corroborative evidence of the four other declarations of his staffs. The declarations of the staffs were also corroborated by the payments of the RTP reflected in the bank statements of their respective banks, from the declaration of the then bank manager of IDBI, Sinthe more branch, Smt. Anjana Dutta who confirmed that Sri Rupesh Singh, Venugopal and later Niraj Kumar Yadav were the bearers of the 'self' cheques presented for cash withdrawal at cash counter. They used to visit the branch to deposit cash, transfer cheques, RTGS/NEFT transactions etc. and Sri Manoj Kumar Gupta was the "boss/employer of Sri Rupesh Singh and later Niraj Kumar Yadav. Later the statements were corroborated by the bank remittances received from the respective banks.

The statement of Sri Pramod Panda was recorded against the issued Summon u/s 70 of WBGST Act, 2017. He used to perform the "puja" at his house. Once Sri Gupta asked from him his personal documents like Aadhaar card, PAN card, photos and other documents for some banking purposes. His personal mobile number (8617796957) was used in the bank opening form of IDBI bank and Union bank at Sinthee more branch. He signed in different documents as per the instructions of Sri Manoj Kr. Gupta. He even signed the blank cheques of such bank as instructed by Sri Gupta. From the received bank statement of the supplier, it was found that the referred email ID of the customer belonged to rupeshsingh84099@gmail.com. The reference of Sri Rupesh Singh was found in the different bank related documents of different suppliers of the RTP. This is to mention further name of the account holder of bank (UNION BANK OF INDIA A/C NO:643601010050432) where payments were occassioned by the RTP to one of its suppliers, ROYAL INTERNATIONAL, is also Sri Pramod Panda. The remittances received from the respective banks also show the facts the accounts were actually operated by the staffs of Sri Manoj Kumar Gupta."

Heard learned counsel appearing for the parties.

An order passed under Section 74 of the GST Act is appealable under Section 107A of the said Act. The above Section categorically states that there is a statutory mechanism for redressal enabling the aggrieved party to challenge the reassessment order before an appropriate appellate authority. This Court underlines that this statutory provision ensures that the petitioner has a clear and adequate remedy available for his grievance.

This Court further holds that when a specific remedy is available, it is a well settled principle of law that the High Court's writ jurisdiction cannot be ordinarily invoked unless under exceptional circumstances. In the present case, as the petitioner could not demonstrate any exceptional circumstances and has adequate relief by way of preferring an appeal under Section 107 of the GST Act and there arises no need for judicial intervention through a writ petition at this stage.

Accordingly, the writ petition being WPA 2520 of 2025 is disposed of. However, this Court clarifies that this dismissal does not prejudice the rights of the petitioner to avail the appellate remedy as provided by law.

However, I make it clear that as the writ petition was filed by the petitioner on 30.01.2025 the appellate authority should allow the writ petitioner to file his appeal within 30 days from date and in accordance with law.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)