16.06.2025
Item No
A 34

Saswata

WPA 3159 of 2025

Hemraj Rice Mill & Anr.
Versus
The Assistant Commissioner, CGST & CX, Bardhaman Division, Bardhaman & Ors.

Mr. Raharshi Chatterjee
Ms. Suman Sahani
...For the petitioners

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
...For the CGST

Mr. Debasish Chowdhury
Mr. Prithu Dudharia
...For the Union of India

1. Challenging the order passed under Section 107 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") dated 11th November 2024 and the demand raised by the respondents in From GST APL – 04 dated 12th November 2024 in respect of the tax period 2017-18 to 2018-19, the instant writ petition has been filed.

2. The case proceeds on the premise that a show cause was issued wherefrom it appears that the authorities after analyzing the date of returns filed by the petitioner in Form GSTR – 3B for 2017-18 had concluded that the petitioners did not reverse the ITC in terms of Section 17(2) of the said Act read with Rules 42 and 43 of the WBGST/CGST Rules, 2017 (hereinafter referred to as the "said Rules") amounting to Rs.55,11,115/-.

3. Although, the petitioners had contested the said proceedings, the proper officer had determined the same without adverting to the formulae for computation of ITC as provided for in Rules 42 and 43 of the said Rules. On an appeal filed by the petitioners, although the appellate authority had concluded that in order to determine the credit available to the tax payer, the adjudicating authority is required to consider amongst others the utilization of ITC and the effective taxable supplies having regard to the provisions contained in Rules 42 and 43 of the said Rules, however, in the instant case, the adjudicating authority had directly jumped to ascertain the credit available to the petitioner without actually following the steps provided for in the said Rules.

4. Notwithstanding the above, since the petitioner did not avail common credit and had not provided any reconciliation

statement for purchases made and the ITC availed for the period 2017-18, the appellate authority had rejected the said appeal.

5. Having heard the learned advocates appearing for the respective parties, and on considering the materials on record, I am of the view that the appellate authority having found that the petitioner had failed to afford appropriate reconciliation statement, ought to have called upon the petitioner to produce such statements to arrive at a correct conclusion, having regard to the scope of Section 107(12) of the said Act.

6. Admittedly, the appellate authority had concluded that the determination had been made by ignoring the procedure for determination of ITC in respect of inputs or inputs services and the reversal thereof as provided in Rule 42 and on the capital goods and reversal thereof as provided in Rule 43 of the said Rules and having regard thereto, in ordinary course, appropriate determination ought to have been made by the appellate authority, by calling for documents from the petitioner. The same has not been done.

7. Be that as it may, since it prima facie appears that the petitioner was also at fault in supplying the reconciliation statements, I am of the view that it would be prudent at this stage instead of remanding the matter back to the appellate authority, to remand the matter back to the adjudicating authority for the adjudicating authority to decide the same in accordance with law by giving an opportunity of hearing to the petitioner.

8. The petitioner shall be at liberty to file reconciliation statements for the relevant assessment year for assisting proper officer in determining the above issue.

9. As a sequel thereto, the orders passed by the adjudicating authority dated 27th December 2023, the appellate authority dated 11th November 2024 and the determination made in Form GST DRC – 07 dated 3rd January 2024 are set aside.

10. With the above observations and direction, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)