

09.07.2025

Kaushik

Sl. No. 02

Ct. No. 05

WPA 3987 of 2025

Abdur Rouf Khan

Vs.

Superintendent of Central Tax, Kolkata Audit-II
Commissionerate, Group 31, Circle-V & ors.

Mr. Prasenjit Das

Mr. Bhaskar Sengupta

.... for the petitioner

Ms. Manju Manot Agarwal

Ms. Aishwarya Rajyashree

.....for the UOI

Mr. Anirban Ray, Ld. GP

Mr. T. M. Siddiqui, Ld. AGP

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

Mr. Debraj Sahu

.....for the State

Mr. Shiv Shankar Banerjee

Mr. Abhishek Chakraborty

....for the CGST

Ms. Manasi Mukherjee

Mr. Bijitesh Mukherjee

.....for the respondent no. 1

1. Affidavit-of-service filed in Court today be taken on record.
2. The petitioner seeks to challenge the audit observation dated 13th January, 2025 which are annexed and marked annexure P-5 to the instant writ petition on the ground that the said issue has already been decided by the State authorities and having regard to the provisions contained in Section 6(2)(b) of the WBGST/CGST Act, 2017(hereinafter referred to as the said Act), the concerned respondents are restrained from initiating any

proceeding against the petitioner on the same subject matter.

3. Mr. Das learned advocate appearing in support of the aforesaid writ petition has drawn the attention of this Court to the order dated 30th March, 2024 passed under Section 73 of the said Act in respect of the financial year 2018-2019. He has also drawn the attention of this Court the order dated 11th July, 2024 passed under Section 73 of the said Act for tax period of 2019-2020 and also to the order dated 28th November, 2023 for the assessment year 2017-2018. All the above orders have been passed by the State authorities. According to him, all the aforesaid orders pertain to an identical issue and cover the entire turn over of the petitioner. According to him, in the light of the above decisions the Central authorities ought not to have made the audit observations in respect of the financial year 2018-2019 and 2022-2023 since according to him the aforesaid issue has already been finally decided by passing appropriate orders under Section 73 of the said Act. This apart a show-cause dated 19th December, 2023 and the order in original passed by the Central authorities for the tax period of 2018-2019 to 2021-2022 on 25th April, 2024 has been disclosed. In the light of the above, the audit observations as aforesaid are in conflict with the provisions of Section 6(2)(b) of the said Act

and also Article 20 of the Constitution of India. Accordingly, the same should be quashed.

4. Mr. Banerjee, learned advocate appears on behalf of the CGST authorities while Ms. Mukherjee appears on behalf of the respondent No. 1. Both Mr. Banerjee and Ms. Mukherjee would submit that the audit proceedings have been initiated under Section 65 of the said. According to them, no steps have still been taken by the authorities in terms of the Section 65(7) of the said Act. As such the contention of the petitioner at this stage is entirely premature. In any event, it is submitted that the audit proceedings have been initiated with the sanction of the Statute. There is no irregularity in initiating the same.
5. Mr. Siddiqui, learned AGP who appears on behalf of the State would submit that the State has already proceeded against the registered tax payer in accordance with law. There is no irregularity in this regard.
6. Having heard learned advocates appearing for the respective parties, the one of the questions that falls for consideration in the present petition is whether the central authorities including the respondent No. 1 had proceeded in violation of the provisions contained in Section 6 (2)(B) of the said Act, I find that the Section 6(2)(B) of the said Act, inter alia, provides that where the proper officer under the

State and the service tax or the Union territory goods and the service tax Act, have initiated any proceedings on the subject matter, no proceedings shall be initiated by the proper officer under the said Act on the same subject matter.

7. Admittedly, in this case, there appears to be three several proceedings initiated by the State authorities against the petitioner in respect of the tax period of 2018-2019, 2019-2020 and 2020-2021 under Section 73 of the said Act. In all the aforesaid matters the issue that fell for consideration was the claim of exempted supply as sought for by the petitioner. From a perusal of the orders, it would further transpire that an enforcement case was initiated to verify the veracity of the claim made by the petitioner as regards exempted/nil rated supply and it is pursuant thereto that three several orders have been passed. Insofar as the show cause notice issued by the CGST authorities dated 19th December, 2023 is concerned, I find that the same has been initiated for the petitioner having acted in contravention of the provisions Sections 9, 37, 38, 39, 49 and 59 of the said Act and Rule 61 (3) of the CGST Rules, 2017 (hereinafter referred to as the said Rules). The same is based on the audit observations for the year 2018-19 to 2021-22. The matter also pertains to suppression of material facts and evasion

of payment of taxes. The other order referred to by the petitioner under Section 73 dated 24th April, 2024, for the tax period of 2018-2019, 2019-2020, 2020-2021, 2021-2022 issued by the Central Authorities is based on an above show-cause dated 19th December, 2023. The petitioner has, however, conspicuously chosen not to annex the audit observation. On perusal of the order impugned it would demonstrate that the order proceeds on basis of audit observations of suppression of taxable value and mismatch unreconciled gross turnover of the petitioner and on the basis thereof, an order was passed.

8. I, however, find that notwithstanding the aforesaid audit observation and the consequential adjudication under Section 73 by falling back of Section 65(7) of the said Act, the respondents have once again chosen to initiate a fresh audit in respect of the financial year 2017-2018 to 2022-2023.
9. Having regard to the fact that the previous audit has already been conducted in respect of the tax period 2018-2019 to 2021-2022, I am of the view ordinarily there is no scope to carry out any further audit under Section 65 of the said Act. Admittedly, in this case, a notice under Section 73 has been issued under Section 65(7) of the tax period 2018-2019 to 2021-2022.

10. In view thereof, there being little scope for the respondents to reopen the audit afresh for the periods which have already been covered by the previous audit, the aforesaid audit should be restricted to the periods 2017-2018 and 2022-2023.
11. The writ petition stands allowed to the above extent.
12. In this context, as already pointed out by Ms. Mukherjee, learned advocate representing the respondent no. 1 that a representation has already been made by the petitioner on 24th January, 2025.
13. The above order shall not stand in the way of the respondents considering the petitioners representation.
14. The respondents shall, however, be free to proceed with the audit in respect of the tax period 2017-2018 and 2022-2023 in accordance with law.
15. In view thereof, a writ petition stands disposed of without any order as to costs.

(Raja Basu Chowdhury, J.)