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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3997 of 2025

M/s. The Road and Roof Projects
Versus
Assistant Commissioner of Revenue,
Director of Revenue Intelligence and Enforcement & Ors.

Mr. Prosenjit Das
Mr. Bhaskar Sengupta
... For the petitioner

Mr. Anirban Ray, Ld. GP,
Md. T. M. Siddiqui, Ld.AGP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the State.

1. The petitioner is a registered tax payer under the provisions of WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act"). In usual course of business, dealings and transactions the petitioner had executed certain works pursuant to the work orders issued by the Irrigation and Waterways Department in the year 2020-21. The petitioner claims that these works are in relation to the implementation of scheme for economic development and social justice as are entrusted to Panchayat under Article 243G of the Constitution of India as per the list detailed in 11th Schedule of the Constitution of India.

2. Incidentally, a composite show cause notice was issued on the petitioner in respect of the works carried

out by the petitioner on 23rd February, 2023, for the tax periods 2020-21 as also 2021-22 alleging that the works executed by the petitioner is a composite supply of works contract which predominantly involves "Earth Work" constituting more than 75% of the value of the works contract, provided to the State Government and accordingly the works attract a tax component @ 5 % under the said Act.

3. The petitioner had responded to the said show cause by a response in writing dated 24th March, 2023 and had clarified, having regard to the nature of work executed by the petitioner which involves water management which is detailed in serial no.3 of the 11th Schedule of the Constitution, the petitioner is otherwise entitled to the benefit of Exemption Notification, being No.12/17 Central Tax (Rate) dated 28th June, 2017 (hereinafter referred to as "the exemption notification").

4. The proper officer did not accept the contention of the petitioner and by a detailed order dated 10th May, 2023, upheld the demand in the show cause. The aforesaid demand was enforced by issuing two separate orders in Form GST DRC -07 for the two separate tax periods i.e., 2020-21 and 2021-22.

5. Being aggrieved, the petitioner preferred two separate independent appeals before the appellate authority under Section 107 of said Act.

6. Although, in respect of the tax period 2020-21 the appellate authority while accepting the contention of the

petitioner and while distinguishing the basis of the adjudication by the proper officer as regards applicability of the Notification was of the view that the criteria for consideration of the Notification was by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India, and not by proceeding as to whether the works executed by the petitioner was categorized under any of the types of jobs mentioned under 11th Schedule of the Constitution. Accordingly, the appellate authority had allowed the benefit of the exemption notification. However, on the other hand, the appellate authority in respect of the appeal concerning the tax period 2021-22 was of the view that the petitioner was not entitled to the benefit of the said exemption notification since, the work was entrusted to the Government of West Bengal Irrigation and Waterways Directorate and not to the Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution. Although, the respondent authorities under the said Act have not challenged the determination made by the appellate authority in respect of the tax period 2020-21, a challenge has been thrown by the petitioner in respect of the order passed by the appellate authority for the tax period 2021-22 dated 2nd July, 2024 by way of the instant writ petition, inasmuch as, the Appellate Tribunal is yet to be constituted.

7. Heard Mr. Das learned advocate representing the petitioner and Mr. Siddiqui, learned senior advocate and Additional Government Pleader representing the State. Although, having regard to the fact that the authorities having not preferred any appeal from the determination made by the appellate authority in respect of the tax period 2020-21, it would have been prudent to set aside the order passed by the appellate authority in respect of the tax period 2021-22 and remand the same, however, having regard to the fact that the matter involves a pure question of law, this Court has taken up this issue for consideration. It may be noted here that the petitioner had executed the works which the petitioner claims to be covered by the 11th Schedule of the Constitution of India, I find that the appellate authority in respect of the tax period 2021-22 has, however, refused to accept the contention of the petitioner on the ground that the tender process for execution of such works was entrusted to the Government of West Bengal Irrigation and Waterways Directorate. I find that the aforesaid finding of the appellate authority has no basis. Since, the petitioner claims that the works are covered under the 11th Schedule of the Constitution, it would be relevant to consider whether the provisions of the Notification No.12/17 Central Tax (Rate) as aforesaid would apply. I find as per serial no.3 of the said exemption notification

the description of services which the petitioner seeks to rely on concerns a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union Territory or local authority by way of an activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The works which the petitioner has executed is covered under Article 243G read with 11th Schedule of the Constitution under serial no.3, as the nature of job executed clearly concerns watershed development and water management. Having regard thereto, there is no justification in denying the benefit of the Exemption Notification No.12/17 dated 28th June, 2017. Simply because the work orders have been issued by the Irrigation Department, the same cannot stand in the way of the petitioner being entitled to the benefit of the said exemption notification, as the same does not alter the character of the works which are in relation to functions entrusted to Panchayat or a Minucipality under Articles 243G and 243W of the Constitution of India as the case may be.

8. Having regard thereto, the order passed by the appellate authority dated 2nd July, 2024 for the tax period 2021-22 cannot be sustained, the same is set aside. Let

the benefit of the exemption notification be accordingly made available to the petitioner.

9. The demand raised by the respondents in Form GST DRC 07 dated 10th May, 2023 for the tax period 2021-22 stands quashed and the adjudication order under Section 73(9) of the said Act is set aside.

10. As a sequel thereto, the demand raised by the respondents in APL-04 is also set aside. The petitioner shall be entitled to consequential benefits.

11. With the above observations and directions the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)