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21.07.2025
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4248 of 2025

Expo Gas Containers Ltd.
Versus
The Commissioner of State Tax, Director of Commercial Taxes & Ors.

Mr. Debasish Ghosh
Mr. Subhasish Nag Chowdhury
Ms. Sanjana Shaw
... For the petitioner

Mr. T. M. Siddiqui, AGP
Mr. T. Chakraborty
Ms. S. Shaw
Mr. S. Sanyal
... For the State.

1. Challenging the order dated 12th December, 2024, passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

2. Although, the appeal was rejected on the ground of limitation, Mr. Ghosh, learned advocate representing the petitioner has pointed out that the discrepancy notified in the notice in Form GST DRC -01A dated 10th January, 2024 for financial year 2019-20 and the show cause issued on the basis thereof would demonstrate that the demand in the show cause is forty times higher, than the demand in original notice issued in DRC-01A. He has also drawn the attention of this Court to the provisions of Section 73(5) of the said Act.

3. Mr. Siddiqui, learned Additional Government

Pleader and senior advocate appears on behalf of the State respondents.

4. Having heard the learned advocates appearing for the respective parties, I notice that the provisions of Section 73(5) of the said Act, inter alia, provides that persons chargeable with tax may, before service of notice under Section 73(1) of the said Act or a statement under sub-section (3) of Section 73, pay the amount of tax along with interest payable thereon under Section 50 on the basis of his own ascertainment of tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment. In this context it would be relevant to refer that having regard to the provisions contained in Rule 142(1A) of the WBGST/CGST Rules, 2017 (hereinafter referred to as the "said Rule"), the proper officer may before service of notice to the person chargeable with tax or penalty under sub-section (1) of Section 73 communicate the details of tax, interest and penalty as ascertained by him in DRC-01A. Although, from a perusal of the aforesaid Rule it does not appear that the proper officer is obliged to serve notice in DRC-01A, however, in the instant case, I find a notice in DRC - 01A has duly been served. Incidentally, on a perusal of the notice in DRC01A dated 10th July, 2024 and the show cause notice in form DRC 01 dated 1st March, 2024, would demonstrate that there is a huge gap in the

demand of tax, interest and penalty. There is no explanation forthcoming from the respondents as to why the aforesaid variation had been notified for the first time in the show cause notice in DRC 01.

5. Be that as it may, taking note of the fact that the petitioner has a legal right by offering appropriate explanation to the notice in DRC-01A so as to prevent initiation of any proceeding under Section 73 of the said Act, and the respondents having issued the notice under Section DRC-01A, I am of the view that the respondents ought not to have taken the petitioner by surprise by enhancing the claim several folds, for the first time in the show-cause notice in DRC-01. I am of the view that ordinarily the petitioner having not been provided with an opportunity to offer explanation to the notice in DRC -01A, the show-cause in DRC-01 dated 1st March, 2024 cannot be sustained. Since, the show-cause is not sustainable the consequent order under Section 73 of the said Act dated 13th May, 2024 and the appellate order dated 12th December, 2024 also cannot be sustained. However, having regard to the fact that the petitioner has now been made aware of the demand, the order issued under Section 73 of the said Act, dated 12th December, 2024, should be treated a notice issued under Section 73 of the said Act, for the tax period 2019-20, subject to the petitioner depositing an additional 10 per cent of the tax

in dispute with the respondent authorities within the period of three weeks from date. The petitioner shall be entitled to respond to the aforesaid order dated 12th December, 2024 by treating the same as show cause under Section 73 of the said Act within four weeks from date.

6. The respondents are directed to proceed and adjudicate the same in accordance with law after providing an opportunity of hearing to the petitioner upon ascertaining the deposit of further amount of 10 per cent.

7. As a sequel thereto, the order passed by the proper officer on 13th May, 2024 and the appellate authority on 12th December, 2024 are set aside. It is made clear that if the petitioner does not comply with the above direction for payment of pre-deposit, the writ petition shall automatically stand dismissed without further reference to the parties and the petitioner shall not be entitled to the benefit of this order.

8. 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 with the requisite formalities.

(Raja Basu Chowdhury, J.)