16.04.2025
Item Nos.
AD 4
Saswata

WPA 5232 of 2025

Baazar Style Retail Limited
versus
Additional Commissioner, CGST and Central Excise, Kolkata North Commissionerate & Anr.

Mr. Vinay Kumar Shraff
Ms. Swarnwashi Poddar
Mr. Dev Kumar Agarwal
...For the petitioner
Mr. Kaushik Dey
Mr. Tapan Bhanja
..For the respondent no.1

Mr. Uday Shankar Bhattacharya
Mr. Tapan Bhanja
...For the respondent no. 2

1. Affidavit of service filed in Court today is retained with the record.

2. Leave is granted to correct the prayer portion of the writ petition

3. The present writ petition has been filed, inter alia, challenging the order dated 16th January 2025 passed by the proper officer under Section 74 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act"), in respect of the tax period March 2019 to May 2019 the summary whereof appears to have been subsequently uploaded on the portal on 4th February 2025.

4. Mr. Shraff, learned advocate appearing in support of the instant writ petition by drawing attention of this Court to the showcause-cum-demand notice issued on 30th September 2022 submits that there was no scope to invoke the extended period of limitation having regard to the nature of the show cause notice. According to him, mere delayed payment of GST cannot attract the provisions of the extended period under Section 74 of the said Act. He has drawn attention of this Court to the provisions of Section 73(5) & (6) of the said Act to drive home the point that an assessee is entitled to make payment of tax along with interest without any other liability, if such payment is made

prior to issuance of show cause notice as contemplated under Section 73 of the said Act. He submits that if such payment is made in the manner as indicated hereinabove, there is no scope or opportunity available to the proper officer to issue any show cause notice consequent upon such payment being made.

5. Mr. Shraff further draws the attention of this Court to the provisions of Section 122(1)(iv) of the said Act to drive home the point that collection of any tax in contravention of the provision of the said Act without making payment thereof to the Government would not be liable to penalty unless a period of three months has elapsed. According to him, the entire payment in respect of the period in dispute was made by the petitioner within the period of three months and having regard thereto, there was no scope or opportunity available to the respondents to invoke the extended period. To drive home the point that the writ petition is maintainable, if it is found that the show cause notice was issued beyond the period of limitation, reliance is placed on the following judgments:-

- ***C.C.E. & S.T., LTU, Bangalore v. Adecco Fexione Workforce Solutions Ltd.*** reported in **2012 (26) S.T.R. (Kar)**

- ***Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur*** reported in **2013 (288) E.L.T. 161 (S.C.)**

- Unreported judgment delivered by the Hon'ble Division Bench of this Court presided over by the Hon'ble the Chief Justice in **MAT 982 of 2023** in the case of **The Statesman Limited *versus* Joint Commissioner, Central Goods and Service Tax**

6. It is also submitted that the petitioner all along had adequate balance in the credit ledger to discharge its liability and as such, the claim made by the respondents in the show cause that the petitioner had claimed and utilized ITC only on the invoices issued by the non-existing entities, was also not justified.

7. Mr. Dey, learned advocate appearing for the respondent no. 1 submits that the show cause notice was issued in the year 2022. The show cause notice comprised of two distinguished grounds, though they are entwined with one another. From the first limb of the show cause it transpires that the petitioner had been made liable for having claimed and utilized ITC on the invoices issued by non-existing entities without receiving any goods against those invoices and having regard thereto, the extended period of limitation had been invoked. On the issue of delayed payment, in paragraph 9.2 of the show cause notice, it is claimed that only upon inspection of the records on the date of search, it was found that with an intent to suppress the value of outward taxable supply of goods and services the petitioner / assessee did not declare the value of outward taxable supply and had the officers of DGGI not launched this investigation, the evasion of GST would have remained undetected and having regard thereto, the extended period has been invoked.

8. Mr. Dey submits that there has been no challenge to the show cause notice. Belatedly, after the order in original has been passed, without availing the statutory remedy provided for, the instant writ petition has been filed. According to him, there is no scope to entertain the writ

petition and as such no interference is called for. He submits that the petitioner should be permitted to avail the statutory remedy. According to him, the judgments relied on are distinguishable on facts and as such, they are not applicable in the facts of the instant case.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. At the very outset, I must note that the petitioner came forward to challenge the order in original dated 16th January 2025 though, the record reveals that the show cause notice was issued on 30th September 2022, invoking the extended period of limitation under Section 74 of the said Act. It appears that the extended period of limitation was invoked on two separate grounds.

11. Firstly, with regard to the issue of utilization of ITC only on the invoices issued by the non-existent entities as recorded in the show-cause, without receiving any goods against those invoices. The show cause notice further spelt out that had the officers not initiated investigation, such wrong claim and utilization of ITC would have remained unnoticed and the assessee would have continued to enjoy the unlawful benefits. Having regard thereto, the extended period of limitation was invoked. It would, however, transpire from the show cause notice that names of five suppliers have been provided.

12. The other ground for issuance of the show cause is that in course of inspection of record on the date of search, it was detected that the assessee with an intent to suppress the value of outward taxable supply of goods and services, did not pay the GST thereon and the assessee also did not

declare the value of outward taxable supply in Form GSTR – 01 for the months of March 2019 to May 2019 and that according to the show cause, had the officers of DGGI not launched this investigation, the evasion of GST would have remained undetected and having regard thereto, the extended period of limitation has been invoked.

13. In this context, I may note that Mr. Shraff learned advocate has laid stress on the fact that no extended period of limitation could have been invoked for mere non-payment of tax. In this context, he has not only relied on the provisions of Section 73(5) & (6) of the said Act but also relied on the judgment delivered in the case of ***Adecco Fexione Workforce Solutions Ltd*** *(supra)* and the judgment delivered in the case of ***Uniworth Textiles Ltd*** *(supra)*.

14. Ordinarily, had the petitioner not raised such issue, it would not have been necessary for this Court to respond to the same, especially when an efficacious alternative remedy in this regard has been provided for. However, since the petitioner has raised this issued, this Court proceeds to deal with such issue. Admittedly, in this case, prima facie, though, it would transpire that only after an investigation was launched, the payments were made. It is not the case of the petitioner that the petitioner had made payment even prior to launching of such investigation, for the respondents to not issue any demand cum show cause. However, the distinction that has been drawn by the petitioner with regard to the authority of the respondents to issue the show cause subsequent to payment, in my view is best left to the authorities to decided in the appeal, especially having

regard to the fact that there had been no contemporaneous challenge by the petitioner to the show cause notice which had been issued on 30th September 2022 and all factual material is not available before this Court.

15. Before parting, I must note that in the case of **Adecco Fexione Workforce Solutions Ltd (supra),** there appears to be no investigation unlike the present case. Similarly in the case of **Uniworth Textiles Ltd (supra),** the Hon'ble Supreme Court in paragraph 12 has proceeded to observe that mere non-payment of duties is not equivalent to collusion or willful mis-statement but such may not be the case here, though no positive findings in this regard are being rendered by this Court as the same would prejudice the parties.

16. Although, Mr. Shraff insisted that this Court should consider the order passed by the proper officer on merits, thereby inviting this Court to the fact that the petitioner had been consistently delaying in making payment of return, I am of the view that such question cannot be considered by this Court in a challenge to a show-cause, that too at such a belated stage.

17. Having regard thereto and noting that the time to prefer an appeal before the appellate authority is yet to expire, by construing the date of the order to be the date when the same was uploaded in the portal in Form GST DRC – 07 that is on 4th February 2025, I am of the view that in the event the petitioner prefers an appeal, the same shall be decided in accordance with law without being influenced by any of the observations made hereinabove.

18. At this stage, Mr. Shraff submitted that having regard to the pendency of the present writ petition, this Court may be pleased to exclude the period for which the writ petition was pending before this Court or in the alternative, extend the period for filing of the appeal by a period of one month from date. I find that the instant writ petition has been filed on 5th March 2025. Having regard thereto, I am of the view that the period between the date of filing of the writ petition and the date of passing of this order shall stand excluded for computing the period of limitation for filing of the appeal

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

20. 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.*)