25.03.2025
Item Nos.7 & 9
gd/ssd

MAT/337/2025
M/S FORGING INDIA IRON AND STEEL LIMITED
VS
UNION OF INDIA AND ORS.
IA NO: CAN/1/2025
with
MAT/384/2025
THE JOINT COMMISSIONER OF CENTRAL TAX, HOWRAH CGST AND CX COMMISSIONERATE
VS
M/S FORGING INDIA IRON AND STEEL LIMITED AND ORS.
IA NO: CAN/1/2025

Mr. Debasish Ghosh.
Mr. Lalit Baid,
Ms. Sudeshna Ghosh,
Ms. Sanjana Shaw,
Mr. Raunak Seal,
Ms. Shreya Saha
..for the Appellant in MAT 337 of 2025 and for the Respondent No.1 In MAT 384 of 2025.

Mr. Uday Shankar Bhattacharya,
Mr. Tapan Bhanja
..for the Respondents in MAT 337 of 2025. and for the Appellant in MAT 384 of 2025.

Mr. Koushik Dey,
Mr. Sujit Mitra
..for the Respondent No.2.

Mr. Abhradip Maity
..for the Respondent No.4.

1. These two appeals, one by the writ petitioner and other by the department.

2. The petitioner is aggrieved by certain portions of the order and the department is aggrieved by the entire order by which the learned writ court has

permitted cross-examination of one Niraj Kumar Nathani.

3. Elaborate submissions were made by the learned advocates appearing for the appellants in both the appeals.

4. The stand taken by the department is that the statement of Niraj Kumar Nathani is only a corroborative statement but there are other abandoned material including the statement of the directors of the appellant/company which clearly shows that the ITC availed was ineligible and based upon fake documents, If such is the position, the department can very well proceed with the matter *de hors* the statement of Niraj Kumar Nathani.

5. We find from the memorandum of appeal filed by the Joint Commissioner of Central Tax, Howrah CGST & CX Commissionerate that the stand taken by the department is that the learned writ court ought to have held that the statement of Niraj Kumar Nathani is nothing but a corroborative one apart from other evidences including the said investigation and inspection report issued by the Bureau of Investigation, Government of West Bengal, Commercial Taxes as well as from the other documentary evidence relied upon by the adjudicating authority in the order-in-original dated 30.10.2024.

6. In the light of the said stand, we are of the view that the said statement need not be referred to in the event the assessee files a statutory appeal before the appellate authority.

7. Another aspect which we have taken note of is that lot of factual issues were involved in this case and it will not appropriate for the writ court to adjudicate on the facts much of which is being disputed by the parties.

8. Therefore, necessarily the assessee has to be relegated to file an appeal before the appellate authority, namely, the Commissioner (Appeal) CGST & Central Excise Appeal-II Commissionerate, Kolkata.

9. In the light of the above, the order impugned is set aside and the direction to the assessee to prefer an appeal before the appellate authority in terms of Section 107(1) of the CGST Act, 2017 and the appellate authority shall decide the appeal petition without reference to the statement recorded of Niraj Kumar Nathani, apart from that the appellate authority shall adjudicate all other issues and pass a reasoned order on merits and in accordance with law after affording an opportunity of personal hearing to the parties.

10. In the light of the fact that the time for preferring the appeal has already expired, we direct the assessee to file the appeal within 45 days from the date of receipt of server copy of this order and the assessee

shall comply with the pre-deposit condition. The assessee shall be permitted to file the appeal manually as the online filing may not be possible as appeal is belated.

11. Needless to state, all issues are left open to be adjudicated.

12. In the light of the observations made by the learned Single Bench in the impugned order are also set aside.

13. Accordingly, both the matters stand disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)