14.01.2025
Item No.18
gd/ssd

FMA/743/2024

SYAMA PRASAD MOOKERJEE PORT, KOLKATA
VS
ADDL COMMISSIONER, CGST AND CX, KOLKATA
NORTH COMMISSIONERATE AND ANR.
IA NO: CAN/1/2024

Mr. Sujit Ghosh, ld. Sr. Adv..
Ms. Mannat Waraich,
Ms. Anshika Agarwal,
Mr. Pujon Chatterjee,
Mr. Sutosom Bhattacharyya
..for the Appellant.

Mr. Vipul Kundalia, ld. Sr. Adv..
Mr. Anindya Kanan,
Mr. D. Chaudhuri
..for CGST Authorities.

1. We have heard the learned advocates for either of the parties.

2. Reference may be made to the order dated 25.6.2024 by which the writ petition which was dismissed was held to be maintainable. In paragraphs 4 and 5 of the said order the following had been noted and recorded:

> "4. From the comparison of the two returns, i.e. Page 76 and Page 136 of the Stay petition, we find that PART A which deals with the general information there is no discrepancy. However, with regard to PART B, viz. the value of taxable services and service tax payable, the figures reflected do not tally with PART B of the revised return which was filed on 21.07.2017. According to the appellant, when the data was populated, there is error wherein PART B of the revised return was not

duly populated into the domain of the Department. Admittedly, this issue cannot be resolved by the adjudicating authority or for that matter, the learned Tribunal and so far the writ court is concerned, it can issue appropriate directions, if on facts, it is found that the submission of the appellant is correct to the appropriate authority viz. the Central Board of Indirect Taxes and Customs, through Directorate General of Systems & Data Management, the 2nd respondent herein for necessary rectification.

5. Therefore, we are of the view that the writ petition was maintainable and we entertain this appeal. The 2nd respondent is directed to furnish the necessary instructions. The 1st respondent being the Additional Commissioner, CGST & CX, Kolkata North Commissionerate is directed to clarify the facts and file a report in the form of an affidavit and the 2nd respondent shall also produce their response to the plea by the appellant requesting correction of the information uploaded in the Portal. Since we have entertained this appeal, no coercive action shall be initiated against the appellant for enforcing the demand which has been crystallized in the order in original dated 16.11.2023."

3. In response to the directions issued in the above order, the Assistant Commissioner (Legal), Kolkata North Commissionerate, CGST & CX who has been authorized by the respondent nos.1 and 2 has filed an affidavit dated 10th December, 2024 disclosing certain facts.

4. For better appreciation, paragraphs 4 and 5 of the affidavit are quoted hereinbelow:

"4. That in compliance of the order aforesaid dated 25th June, 2024 passed by this Hon'ble Court, it is humbly submitted that with the rollout of GST, the department moved to the new Integrated ACES- GST Application and migrated the data of Central Excise and Service Tax to the new application. The data relating to the Service Tax returns filed in respect of M/s Shyama Prasad Mukherjee Port, Kolkata having Service Tax Registration no. AAA JK 0361 LS T002 is verified in the databases of both the new integrated ACES - GST Application and the Legacy ACES Application is tabulated below:

TABLE-A

RETURN/ MONTH	RETURN YEAR	OPENING BALANACE	CLOSIN G
10	2016	28745834	300455 41
10	2016	28745834	300455 41
11	2016	28745834	341481 71
11	2016	28745834	341481 71
12	2016	28745834	484241 72
12	2016	28745834	484341 72
1	2017	48434172	388382 68
1	2017	48434172	388382 68
2	2017	38838268	303951 35
2	2017	38838268	303951 35

3	2017	30395135	375368 43
3	2017	30395135	375368 43

Data as per Legacy ACES Application:

TABLE-B

I. October 2016- March 2017(original)

MONTH-YEAR	CREDIT TYPE	OPENING BALANCE	CLOSING BALANCE
10-2016	CENVAT	28745834	300455 41
11-2016	CENVAT	30045541	341481 71
12-2016	CENVAT	34148171	484241 72
01-2017	CENVAT	48434172	388382 68
02-2017	CENVAT	38838268	303951 35
03-2017	CENVAT	30395135	375368 43

II. October 2016-March 2017(Revised)

MONTH-YEAR	CREDIT TYPE	OPENING BALANCE	CLOSING BALANCE

10-2016	CENVAT	28745834	34128385
11-2016	CENVAT	34128385	39514987
12-2016	CENVAT	39514987	59593150
01-2017	CENVAT	59593150	48642700
02-2017	CENVAT	48642700	71198028
03-2017	CENVAT	71198028	74892505

III. October 2016-March 2017 (Reviewed)

MONTH-YEAR	CREDIT TYPE	OPENING BALANCE	CLOSING BALANCE
10-2016	CENVAT	28745834	34128385
11-2016	CENVAT	34128385	39514987
12-2016	CENVAT	39514987	59593150
01-2017	CENVAT	59593150	48642700
02-2017	CENVAT	48642700	71198028
03-2017	CENVAT	71198028	74892505

5. That on examination of data retrieved from both the systems for the said period i.e October 2016 to March 2017 it is confirmed that the appellant has filed the revised return for the period, however, data pertaining to the

> revised return have not migrated completely to the new integrated ACES-GST Application system and therefore the data pertaining to the original return is being reflected in the new system.”

5. In the light of the above stand taken by the department, the case of the appellant/assessee has to be accepted and necessary rectification has to be done.

6. Though Mr. Ghosh, learned senior advocate appearing for the appellant prayed for quashing the proceeding, we are of the view that in the light of the stand taken by the department it is the department which has to be rectify the mistake and pass a revised order.

7. Mr. Ghosh, learned senior advocate appearing for the appellant submitted that the impugned order which was challenged in the writ petition has to be set aside.

8. Pursuant to the stand taken by the department, the Portal has to be created and thereafter a revised order has to be passed.

9. Thus, technically the learned senior advocate is right and for such reason, we allow this appeal and set aside the impugned order with a direction to the authorities to make the necessary correction in the Portal and issue a revised order accepting the stand taken by the appellant/assessee.

10. The above exercise shall be completed within a period of four weeks from the date of receipt of the server copy of this order.

11. It is made clear that the matter is sent back to the department for compliance of the above direction and this should not be misconstrued as a remand of the matter for initiation of the fresh proceedings.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)