M/L
Item No.- 1314
11.07.2025
Court No. 5
Rohan

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 23579 of 2023
With
I.A. No.: CAN 1 of 2024

Shiva Chemicals & Anr.
Versus
Assistant Commissioner of Revenue, State Tax
Jorasanko & Jorabagan Charge & Ors.

Ms. Sutapa Roy Choudhury, Sr. Adv.,
Mr. Abhijat Das,
Ms. Aratrika Roy.
… for the petitioner

Mr. Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal.
… for the State

<u>In Re: I.A. No.: CAN 1 of 2024</u>

1. The instant application has been filed, *inter alia*, for a clarification of an order dated 18th July, 2024 to the extent that though this Court had directed the appellate authority to form an opinion on the basis of the documents available on record, inter alia, including the e-waybills, tax invoices, bank statements and party ledger, as to whether they match the relevant transactions and if the answer is in the affirmative, then the genuinity of the transactions/movement of goods shall not be questioned further, today, Ms. Roy Choudhury, learned senior advocate representing the petitioner would submit that though certain e-waybills

had been disclosed before the authority, the same were in respect of different period. She submits that in terms of the trade circular no. 1 of 2018 dated 8th January, 2018, the e-waybills have been made effective from 1st February, 2018. As such for the relevant period there was no e-waybill.

2. I find that the aforesaid trade circular was not disclosed by the petitioner at the time of disposal of the writ petition. As rightly pointed out by Mr. Chakraborty, learned advocate representing the respondents that this Court, proceeding on the basis that e-waybills had been disclosed by the petitioners, had passed the aforesaid order. Now it transpires that the e-waybills available are inapplicable for the relevant period. Unfortunately, Mr. Chakraborty also did not bring the said fact to the notice of the Court when the matter was heard and the order dated 18th July, 2024 was passed. Having regard thereto, the matter was reconsidered and the advocates for the parties were heard.

3. As would appear from the above that the challenge in the appeal was confined to the supplies allegedly effected by Dhiraj Kumar Sharma for the period of September, 2017 to October, 2017, for which the petitioner had produced documents which included inward tax supply invoices mentioned in Table-A of the

order, party ledger for the period from 1st April, 2017 to 31st March, 2018, bank statements and copy of the GSTR-2A. The fact that the petitioner no.1's supplier had filed returns for the relevant period is also not in dispute. Although, in paragraph 12 of the judgment dated 18th July, 2024, it had been noted on the basis of the disclosure made by the parties that the petitioners had discharged its initial burden in establishing the sanctity of the transaction by placing reliance on the e-waybills which were issued by the respondents, such finding now pales into insignificance having regard to the disclosure made in Court today. However, notwithstanding the same, the fact that the bank statements and the statements made in form GSTR – 2A would also support the petitioners' case cannot be overlooked.

4. Proceeding on such basis, I find that the petitioners having discharged its initial burden, and the same having being glossed over by the appellate authority, the matter would require reconsideration, though, the reconsideration now would be limited to availability of records, *inter alia*, including tax invoices, bank statements and party ledger disclosed by the petitioner no. 1.

5. In the changed premise as aforesaid, I am of the view that on the basis of the materials available which

remains unchallenged, if the appellate authority is of the opinion that the tax invoices, bank statements and party ledger match relevant transactions, then the genuinity of the transaction/movement of the goods shall not be questioned further and the appeal shall be decided upon giving opportunity of hearing to the petitioner no. 1 or its representative as expeditiously as possible, preferably within a period of eight weeks from the date of communication of this order.

6. The appellate authority shall be at liberty to consider all issues while passing his judgment.

7. The aforesaid judgment and order dated 18th July, 2024, accordingly, stands modified to the aforesaid extent. The other directions contained in the said order as noted in paragraph 16 including the direction for expeditious disposal of the appeal upon giving opportunity of hearing to the petitioners as directed in paragraph 15 shall remain unchanged.

8. Accordingly, the connected application is disposed of.

9. Urgent certified Photostat copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Raja Basu Chowdhury, J.)