18. **23.04.2025**
Court No.05.

(Pritam)

WPA 27267 of 2024

OCL Iron and Steel Ltd. & Anr.
-Vs.-
The State of West Bengal & Ors.

Mr. Pratyosh Jhunjhunwala,
Mrs. Brinda Sengupta,
Ms. Rishika Goyal
...for the petitioners.

Mr. Md. T. M. Siddiqui, Ld. AGP.,
Mr. A.R. Ray,
Mr. T. Chakraborty,
Mr. S. Shaw,
Mr. S. Sanyal
....for the State.

1. Affidavit-of-service filed in Court today be taken on record.
2. Challenging the orders dated February 5, 2024 and May 15, 2024 passed by the Proper Officer under Section 73 of the WBGST & CGST (hereinafter referred to as the "said Act") in respect of tax period April 2018 to March 2019 issued against Samriddhi Metals Pvt. Ltd., (hereinafter referred to as the "transferor company") which has incidentally merged with the petitioner under a Scheme of amalgamation sanctioned by the National Company Law Tribunal, Kolkata Bench on January 30, 2024 with effect from April 1, 2022, the instant writ petition has been filed.
3. Mr. Jhunjhunwala, learned advocate representing the petitioner by drawing attention of this Court to the Circular No.123/42/2019-GST dated November 11,

2019 would submit that a clarification has been afforded by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs with regard to availment of Input Tax Credit (ITC) in terms of the sub-rule (4) of Rule 36 of CGST Act, 2017 whereby it has been provided that the restriction of availment of ITC is imposed only in respect of invoices/debit notes, details of which are required to be uploaded by suppliers under sub-section (1) of Section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under Reverse Charge Mechanism (RCM), credit revenue from ISD, etc., which are outside the ambit of sub-section(1) of Section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. He would submit that sometimes in the year 2022, a proceeding has been initiated by the respondents on account of there being difference in the liability declared in GSTR-2A and that in GSTR-3B of the said transferor company for the period April 2018 to March 2019.

4. According to the petitioner, although a difference of Rs.184,15,984/- was noted, however, since Rs. 1,80,46,140/- was claimed as ITC on import of goods, there being no requirement in law for uploading the invoices which were covered by the import, the

transferor company was entitled to claim ITC in respect of IGST paid on imports and since the balance amount of Rs.3,69,844/- to constitute the aggregate figure of Rs.1,84,15,985/- was reversed by the said transferor company during the month of March 2019, the difference in GSTR 2A with GSTR 3B was thus explained. The above explanation as provided by the said transferor company to the respondents in response of notice issued by the authorities in the form of GST DRC-O1A (pre-show-cause notice) was accepted and on the basis thereof had dropped the proceedings though by issuing a show-cause notice under DRC-O1 dated December 15, 2022.

5. He would submit that an identical issue had once been racked up when the respondents for the tax period April 2018 to March 2019, after conducting an Audit, by issuing the show-cause dated September 4, 2023, claiming that there was excess availment of ITC to the extent of Rs.184,15,985/- since there was a difference in GSTR 2A with GSTR 3B. According to the petitioner, the aforesaid issue had already been considered by the respondents while dropping the previous charges. Unfortunately, on this occasion, the transferor company could not appropriately respond to the show-cause since at the relevant point

of time, the transferor company was going through the process of amalgamation.

6. By drawing attention of this court to the provisions of the said Act, it is still further submitted that although, the provisions under Section 75(4) of the said Act requires an opportunity of personal hearing to be granted, in this case admittedly, no such opportunity had been granted. Having regard thereto, it is submitted that the matter should be remanded back to the authorities for a fresh decision upon hearing the petitioner.

7. Mr. Siddiqui, learned Additional Government Pleader and senior advocate appearing on behalf of the respondents, submits that the transferor company had claimed ITC in respect of imports. According to him, since the transferor company did not file any response, the above explanation was not considered by the proper officer. The proper officer cannot be faulted for the same. In any event, he would acknowledge the fact that from show-cause notice, it would be apparent that opportunity of personal hearing had not been offered.

8. Heard learned advocates representing the respective parties and noting the peculiar facts, I am of the view that the petitioner should be afforded with an opportunity to appropriately explain the discrepancy that had occurred including the difference in relation

to the GSTR-2A and GSTR-3B filed by the transferor company. Further, taking note of the fact that no opportunity of hearing was given, which is mandatorily required to be provided under Section 75(4) of the said Act, I am of the view that the respondents should decide the matter afresh upon offering the petitioner opportunity of personal hearing and by noting the petitioners' response.

9. Considering the peculiar facts as noted hereinabove, while setting aside the order passed on February 5, 2024 and May 15, 2024, I remand the matter back to the proper officer for a fresh decision on merits. The petitioners shall be entitled to file an explanation before the proper officer on or before the date fixed for personal hearing to be notified by the proper officer in advance.

10. However, at the same time taking note of the fact that the petitioner has belatedly approached this Court, the petitioner is directed to make payment of Rs.50,000/- to the High Court Legal Services Authority, Kolkata within two weeks from date and to produce the receipt thereof before the proper officer.

11. With the aforesaid observation and direction, the instant writ petition being WPA 27267 of 2024 is disposed of.

(Raja Basu Chowdhury, J.)