

14.01.2025
Item No.9
gd/ssd

MAT/2100/2024
M/S JYOTI TAR PRODUCTS PRIVATE LIMITED AND
ANR.
VS
THE DEPUTY COMMISSIONER, STATE TAX
SHIBPUR CHARGE WBGST AND ORS.
IA NO: CAN/1/2024

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Piyush Khaitan
..for the Appellants.

Md. T.M. Siddique
..for the State.

1. This intra court appeal by the writ petitioners is directed against the order dated 11th November, 2024 in WPA 23741 of 2024.

2. In the said writ petition the appellants had challenged an adjudication order passed under Section 74(9) of the WBGST/CGST Act, 2017 (for short, “the Act”) dated 10th July, 2024.

3. The appellants were issued a pre-show cause notice under Section 73 (5) of the Act dated 16th August, 2023 on the allegation that the appellants had claimed input tax credit against supply received from non-existent RTPs whose registration has been cancelled. The details were enclosed in the annexure to Form GST DRC-01A.

4. The appellants on receipt of the pre-show cause notice submitted their reply dated 6th October, 2023. Among other things they stated that they have effected purchases from three enterprises and all the purchases made were properly accounted by them and claimed ITC as and when shown in GSTR-2A and they have also cleared their account through bank payment and the details thereof were attached to the reply.

5. The appellants further stated that they are enclosing the copy of all tax invoices, copy of all e-way bills along with copy of kata slip, bank statement and copy of ledger from books.

6. Further, with regard to the cancellation of the registration of the suppliers the appellants contended that they have made the purchases from those parties at the time when their registrations were active/valid.

7. The appellants referred to Section 16(2) of the Act which stipulates the conditions for availment of input tax credit and they submitted that they have complied with the requirements by producing the tax invoice/debit note or other taxpaying documents and they have received the goods and the tax charged in respect of such supply has been actually paid to the government.

8. Further, they submitted that the details were furnished in the periodical returns as could be

seen in the GST Portal. With these submissions they requested that the further proceedings in the pre-show cause notice be dropped.

9. The authority appears to have not been satisfied with the submissions made or with the documents which were enclosed along with reply to the pre-show cause notice and proceeded to issue show cause notice dated 26th December, 2023 reiterating the same allegations as contained in the pre-show cause notice.

10. The assessee uploaded their reply to the show cause notice on 26th February, 2024 reiterating the earlier reply dated 16.10.2023 and submitted that they have purchased goods from local dealers; cost of material/goods is inclusive of freight and that they do not provide any expenses as carriage inwards as it is included in the cost of the goods.

11. Thus, what was required to be considered by the adjudicating authority is whether the assessee had complied with the requirements under Section 16(2) of the Act.

12. The adjudicating authority passed an order under Section 74 of the Act on 10th July, 2024.

13. On a perusal of the same, we find that the adjudicating authority has not dealt with the issue as to what would be the effect of retrospective cancellation

of a supplying dealer on the claim of input tax credit made by the purchasing dealer.

14. Secondly, the assessee's specific case that they have established the movements of goods by producing all tax invoices, copy of all e-way bills along with copy of kata slip, bank statement and copy of ledger from books has not been dealt with by the adjudicating authority.

15. The other finding rendered by the adjudicating authority is raising doubt on the nature of business carried on by the suppliers stating that as per their registration they are not dealing with such goods which is said to have been purchased by the appellant/assesseees.

16. However, this appears to be not the allegation in the pre-show cause notice as the only allegation was that the three suppliers' registration has been cancelled.

17. It is submitted by the learned advocate for the appellants that such retrospective cancellation of registration of the suppliers cannot affect or impinge upon the right of the purchaser if the purchaser proves the necessary requirements in terms of Section 16(2) of the Act.

18. In support of such contention reliance was placed on the decision of the Division Bench of this High Court in the case of *M/s. Shraddha Overseas*

Private Limited & Anr. v. The Assistant Commissioner of State Tax, Chandni Chawk & Princep Street Charge & Ors. in MAT 1860 of 2022 dated 16.12.2022. Reliance has also been placed on the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Suresh Trading Company* in [1998] 1998 taxmann.com 1747 (SC). The other decisions of the learned Single Benches of the High Court have also been referred to.

19. However, these submissions does not appear to have been considered by the assessing officer as there is no recording of any finding with regard to the decisions which were relied on by the assessee.

20. Reliance was also placed on the decision of the Division Bench of this High Court in MAT 855 of 2022 and MAT 856 of 2022 dated 16th September, 2022 in the case of *Assistant Commissioner of State Tax, ITC Investigation Unit v. LGW Industries Limited & Ors.* Reliance was also placed on the decision of the Division Bench of the High Court at Delhi in the case of *APN Sales and Marketing v. Union of India* in (2024) 22 Centax 218 (Del.).

21. In our view, two major issues had to be considered by the adjudicating authority, namely, the effect of retrospective cancellation of the registration of the suppliers and the aspect as to whether the purchaser/appellants have proved movement of goods.

22. This exercise appears to have not been done by the adjudicating authority and, therefore, we are of the view that the matter has to be readjudicated by taking note of all the factual issues bearing in mind the legal principles laid down in various decisions. Though the reply to the pre-show cause notice dated 6.10.2023 gives the necessary details and the documents which have been annexed, we are of the view that the appellants should submit a fresh reply dealing with all issues with liberty to place the decisions of the various courts on which they seek to place reliance.

23. We make it clear that we have not rendered any finding on the merits of the matter and it is for the adjudicating authority, namely, the Deputy Commissioner of State Tax, Shibpur Charge to take a fresh decision in the matter after the additional reply is filed by the appellants/assessee to the show cause notice.

24. For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside and the order passed by the adjudicating authority under Section 74(9) of the Act dated 10.07.2024 is set aside and the matter is remanded back to the adjudicating authority for a fresh decision on merits and in accordance with law after affording

opportunity of personal hearing to the authorized representative of the appellants.

25. The appellants are directed to file the additional reply to the show cause notice within 15 days from the date of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)