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jks 15.01.2025

WPA 28834 of 2024

Eastland Switchgears Pvt. Ltd. & Anr.
Vs.
The Assistant Commissioner of Revenue & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
… … for the petitioners
Mr. Anirban Ray
Mr. Md. T. M. Siddiqui
Mr. N. Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
… … for the State

Learned counsel appearing for the petitioner submits that a show-cause notice dated 19th November, 2024 was issued by the Assistant Commissioner of Revenue being the respondent no.1 in the instant case regarding the issue of short payment of tax against commission income received from PT JEMBO CABLE COMPANY amounting to Rs.16,56,267/-(IGST) and on perusal of the said show-cause notice it is seen that except extracting the reply given by the petitioners herein, the authorities did not deal with the contentions which were placed by the petitioner in the reply to the pre show-cause notice. Thus the show-cause notice was issued without application of mind and does not reflect an independent or reasoned consideration of the petitioner's submission. Consequently, the petitioner contends that the show-cause notice, being devoid of due consideration, is liable to be set aside.

Learned counsel appearing for the respondent authorities narrating the show-cause notice has stated that after considering the reply given by the petitioner in the pre show-cause notice the questions that were raised regarding mismatch between IGST (R)-9 and IGST (R)-1 were recorded in the show-cause notice which are as follows:

"As regards the issue of short payment of tax against commission income received from PT JEMBO CABLE amounting to Rs. 16,56,267 (IGST) along with interest under section 50(1) of the CGST/WBGST Act, 2017, the Noticee states that it had provided a detailed reply claiming that the said supply was an exempt supply as per entry No. 12AA of Notification No. 9/2017-IGST (R) dated 28/06/2017 and the Noticee had provided all documentary evidence in this regard. However, while issuing the final audit report it has merely been stated that the said exemption is not applicable to the Noticee who is registered within the territory of WEST BENGAL, INDIA without giving any justification for denial of such claim of exemption from payment of tax. The Noticee states that it had acted as a commission agent between a transaction entered in to by M/s. NT Traders, Thimpu Bhutan and M/s. PT. Jembo Cable Company, Indonesia for supply of goods between the two parties. The Noticee states that as per Notification No. 9/2017-IGST (R) dated 28/06/2017 as amended from time to time, entry No. 12AA w.e.f.

1.10.2019 provides an exemption from payment of GST to an intermediary under SAC 9961 as below- "Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory." The said exemption is subject to the following conditions: "Following documents shall be maintained for a minimum duration of five years:

1) Copy of Bill of Lading

2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods

3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory

(4) Copy of certificate of origin issued by service recipient located in nontaxable territory.

(5) Declaration letter from an intermediary service provider in taxable territory on company letterhead confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory." The Noticee had provided all the above documents in support of such exemption. Thus, the Noticee states that the audit report confirming the short payment of tax on the above account is liable to be modified as the said service was an exempt service by the Noticee.

The decision by the undersigned on the above discrepancy stands and hence the liability remains as:

The commission received by the RTP from PT JEMBO CABLE COMPANY which is Rs.92,00,927.00 will be taxable at 18% rate of Interest.

Hence tax payable should be IGST = Rs.16,56,167.00 and the interest amount will be Rs.9,92,339.00."

Thus the petitioner is questioned in the show cause notice about the evasion of tax.

Heard learned counsel for the parties.

The show-cause notice issued on 19th November, 2024 is correctly issued by the respondent no.1 in relation to the alleged short payment of tax on commission income where the authority has considered all the relevant answer while coming to a conclusion that a commission received by the petitioner from M/s. Jembo Cable of Rs.16,56,267/- cannot be treated as exempted service and thus issued the show-cause notice. This Court emphasizes that the show-cause notice serves as a preliminary step in the adjudication process, allowing the petitioner to present further submissions and evidence before the adjudicating authority thereby adhering to the principles of natural justice. The petitioner is, therefore, requested to appear before the adjudicating authority who shall consider all the submissions of the petitioner before passing the adjudicating order.

This Court concludes that the issuance of the show-cause notice was lawful, as the notice forms an integral part of the tax adjudication process. Moreover, the matter requires adjudication regarding whether the claimed exemption is applicable to the petitioner.

Accordingly, WPA 28834 of 2024 is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)