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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 30767 of 2024

AB Engineering Enterprises & Anr.
Versus
The State of West Bengal & Ors.

Ms Bulbuli Basu
... For the petitioners.

Mr. Anirban Ray, Ld. GP,
Mr. T. M. Siddiqui, Sr. Advocate,
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the State.

1. The instant writ petition has been filed, inter alia, praying for adjustment of an amount of Rs.6,86,652/- paid by the petitioners on the basis of the demand raised by the respondents in Form GSTDRC 07 dated 23rd March, 2023.

2. The petitioners' case proceeds on the premise that a show-cause notice under Section 73 of the Central Goods and Services Tax Act, 2017 as well as West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") dated 29th March, 2022 for the tax period July, 2017 to March, 2018 had been issued. Subsequently, the authorities had passed an order and raised a demand in Form GSTDRC 07 dated 23rd March, 2023. In compliance thereof, the petitioners claim to

have made payment of the entire demand in Form GSTDRC-03. Such fact would corroborate from a print out of Form GSTDRC 03 dated 26th April, 2023 downloaded from the GST portal. The petitioners are, however, aggrieved by reasons of the respondents purporting to deduct a further sum of Rs.45,856/- and Rs.588/- both against the demand of Rs.6,86,652/-.

3. Mr. Siddiqui, learned senior advocate and Additional Government Pleader led by Mr. Anirban Ray, learned Senior advocate and Government Pleader, appearing on behalf of the State respondents would submit that the petitioners are themselves to blame for the anomalous situation created. Ordinarily a payment against demand is required to be made electronically in FORM GST PMT-01 against the debit entry created for such demand. In this case the petitioners had made payment through FORM GST DRC-03 which is meant for regular payment. By placing reliance on rule 142 of the CGST/WBGST rules, 2017 (in short the said rules) he would submit that by notification no.12/24 dated 10th July, 2024 sub-rule (2B) of rule 142 has been inserted which takes care of such anomalous situation. According to him in the event, the petitioners make an appropriate application in Form

GSTDRC03A, the anomaly would be rectified and the amount which has been realized in terms of the determination made in Form GSTDRC 07, from the petitioners' electronic liability register shall duly be refunded back, provided the petitioners make an application under Section 54 of the said Act for refund.

4. Having heard the learned advocates appearing for the respective parties and having considered the scheme of rule 142 of the said rules which provides that voluntary payments or payments made pursuant to intimation made in FORM GST DRC-01 by the proper officer before a demand is raised shall be made in FORM GST DRC-03, however, once a demand is raised or an order is passed and a demand is raised for recovery in GST DRC-07, the payment thereof could only be made by crediting the demanded amount in the electronic liability registered in FORM GST PMT-01 against the debit entry created for such demand. I may note that sub-rule (2B) of rule 142 has recently been inserted by notification no.12/24 dated 10th July, 2024 which takes care of payments made in FORM GST DRC -03 against a recovery demand as well. To morefully appreciate the same, sub-rule 2 and (2B) of rule 142 of the said rules are extracted

hereinbelow:-

"(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or clause (i) of sub-section (8) of section 74A, as the case maybe, or tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74 or clause (i) of sub-section (9) of section 74A, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and an acknowledgement, in FORM GST DRC-04 shall be made available to the person through the common portal electronically.

..

(2B) Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 [or section 74A] or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or

section 129 or section 130, has been paid by the said person through an intimation in FORM GSTDRC 03 under sub-rule (2) instead of crediting the said amount in the electronic liability register in FORM GST PMT -01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC 03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC -03 shall be credited in Electronic Liability Register in FORM GST PMT - 01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC -03".

5. Admittedly, in this case the petitioners had paid the demand, in Form GST DRC-03 instead of crediting the said amount in electronic liability register in Form GST PMT -01 against the debit entry created for the said demand. It appears that rule (2B) taking note of such anomalous situations has provided for an opportunity to such person to apply in Form GSTDRC-03A electronically on the common portal for availing the benefit of the amount already paid in Form GST DRC-03, for the same to be credited in the electronic liability register in Form GST PMT 01

against the debit entry already created for the said demand. Since, it is an admitted position that the petitioners had made payment in Form GSTDRC-03, I permit the petitioners to make an appropriate application in Form GSTDRC03A electronically.

6. If such application is made within a period of two weeks from date, the respondents shall by taking note of such application, credit the amount already paid by the petitioners in Form GSTDRC-03, in the electronic liability register in Form GSTPMT-01 against the debit entry already created for the demand raised by the respondents in Form GSTDRC-07 dated 23rd March, 2023.

7. Insofar as the amount recovered from the petitioners' electronic liability register is concerned, I am of the view, having regard to the submissions made by Mr. Siddiqui in Court, if the petitioners make an application under Section 54 of the said Act, such application shall duly be processed and the amount as aforesaid already recovered shall be refunded back to the electronic cash/credit ledger of the petitioners within a period of two weeks from the date of making such application.

8. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)