S/L 40
08.01.2025
Court. No. 3
Sourav

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

WPA 92 of 2024

M/s. Joardar & Joardar
Vs.
State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Mr. Ashok Goel
Ms. Radhika Agarwal
Ms. Meghana Joshi
Ms. Khushi Kundu

... for the petitioner.

Mr. Subir Kumar Saha, Ld. AGP
Mr. Pretom Das

... for the State.

1. Challenge in this writ petition is the assessment order dated 15.03.2022 as passed by the adjudicating authority being the respondent no. 3 as well as the order of the appellate authority dated 10.04.2023 as passed by the respondent no. 4 herein.

2. In course of his submission, Mr. Lakhotia, learned advocate appearing on behalf of the writ petitioner submits before this Court that the writ petitioner being a Registered Tax Payer (hereinafter referred to as 'RTP', in short) has prayed for excess Input Tax Credit (hereinafter referred to as 'ITC', in short) to the tune of Rs. 2,71,152.76 which was arbitrarily rejected by the respondent no. 3 and in an appeal preferred by the writ petitioner, the respondent no. 4 being the appellate authority upheld such order without application of mind.

3. It is further submitted by Mr. Lakhotia that for the relevant financial year of 2018-19, the present writ petitioner being an RTP had duly paid the GST to its supplier who in turn did not pay the same and for which no liability can be imposed upon the writ petitioner for the alleged violation of the provision of Section 16(2) (c) and (d) of the CGST Act, 2017 (hereinafter referred to as the 'said Act of 2017').

4. In course of his submission, Mr. Lakhotia places his reliance upon a reported decision in the case of ***Suncraft Energy (P.) Ltd. Vs. Assistant Commissioner, State Tax,*** reported in ***[2023] 153 taxmann.com 81 (Calcutta)***. It is submitted by Mr. Lakhotia that in the said reported decision, it has been held by a Division Bench of this Hon'ble Court that it is the duty of the respondent/authority to take appropriate action against the defaulting seller prior to directing the writ petitioner to reverse the ITC.

5. It is further submitted by Mr. Lakhotia that the writ petitioner being an RTP is in possession of the document showing payment of GST to its supplier and the same was not taken into consideration either by the adjudicating authority or by the appellate authority i.e., the respondent nos. 3 and 4 respectively.

6. Mr. Das, learned advocate appearing for the State, however, opposes such contention.

7. It is contended by Mr. Das that within the four corners of the instant writ petition, no document is found that for the relevant financial year the writ petitioner had paid GST to its supplier as wrongly claimed. It is further submitted by Mr. Das that at the time of hearing before the adjudicating authority even before the appellate authority no such document could be produced to substantiate the claim of the writ petitioner.

8. For effective adjudication of the instant *lis*, some relevant paragraphs of the reported decision of ***Suncraft Energy (P.) Ltd. (supra)*** are required to be looked into and those are quoted hereinbelow in verbatim:

> *"**4.** It is the case of the appellant that they have fulfilled all the conditions as stipulated under sub-section (2) of section 16 and they also paid the tax to the fourth respondent, the supplier and a valid tax invoice has been issued by the fourth respondent for installation and commission services and the appellant had made payment to the fourth respondent within the time stipulated under the provisions of the Act. Thus, grievance of the appellant is that despite having fulfilled all the conditions as has been enumerated under section 16(2) of the Act, the first respondent erred in reversing the credit availed and directing the appellant to deposit the tax which has already been paid to the fourth respondent at the time of availing the goods/services. In support of his contention, the learned Counsel for the appellant had placed reliance on the decision*

of the Hon'ble Supreme Court in Union of India (UOI) V. Bharti Airtel Ltd. [2022] 4 SCC 328/[2021] 131 taxmann.com 319/2021 (54) G.S.T.L 257/[2022] 89 GST 1. The learned Advocate for the appellant also placed reliance on the press release dated 18-10-2018 issued by the Central Board of Indirect Tax and Customs and also the press release dated 4-5-2018 substantiate their argument that the ground on which the first respondent had passed the impugned order of recovery of tax is wholly unsustainable.

5. ....

6. ....

7. ....

8. ....

9. *The first respondent without resorting to any action against the fourth respondent who is the selling dealer has ignored the tax invoices produced by the appellant as well as the bank statement to substantiate that they have paid the price for the goods and services rendered as well as the tax payable thereon, the action of the first respondent has to be branded as arbitrarily. Therefore, before directing the appellant to reverse the input tax credit and remit the same to the government, the first respondent ought to have taken action against the fourth respondent the selling dealer and unless and until the first respondent is able to bring out the exceptional case where there has been collusion between the appellant and the fourth respondent or where the fourth respondent is missing or the fourth respondent has closed down its business of the fourth respondent does not have any assets and such other contingencies, straight* *away the first respondent was not justified in directing the appellant to reverse the input tax credit availed by them. Therefore, we are of the view that the demand raised on the appellant dated 20-2-2023 is not sustainable."*

9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals to this Court that the dispute between the writ petitioner and the respondents/authorities centres around production and/or non-production of the relevant document showing alleged payment of GST to the supplier by the writ petitioner for the relevant period. From the impugned order dated 15.03.2022, it cannot be ascertained as to whether the writ petitioner at all filed the invoice(s) showing payment of GST to its supplier though at the time of hearing, learned advocate for the writ petitioner strongly contended that such document(s) have been produced before the respondent no. 3.

10. Admittedly, being a writ court, this Court in its judicial review is not expected to enter into the factual aspects of the case unless it is shown that the finding of the adjudicating authority and/or appellate authority is perverse and is based on non-consideration of the relevant materials and/or consideration of extraneous evidence which are not on record.

11. Since from the impugned orders, it is not reflected as to whether either before the adjudicating authority or the appellate authority, the writ petitioner produced invoice(s) to substantiate his contention that he had paid the price for the goods and services rendered as the tax payable thereon to his supplier, this Court considers that justice would be sub-served if the instant matter is sent back to the adjudicating authority i.e., respondent no. 3 for adjudication afresh after giving an opportunity of hearing to the writ petitioner as well as by filing all relevant documents to substantiate his excess ITC claim as made in GSTR 3B.

12. In view of such, the impugned order dated 15.03.2022 as passed by the respondent no. 3 and the impugned order dated 10.04.2023 as passed by the respondent/authority are set aside. The matter is remanded back to the respondent no. 3 for fresh adjudication.

13. Liberty is given to the writ petitioner to file/produce all relevant documents to substantiate its excess ITC claim including the invoice(s) showing payment of GST to its suppliers for the price of the goods and services rendered to the writ petitioner by its suppliers during the relevant financial period.

14. The respondent no. 3 is directed to complete the process of adjudication within 60 days from the date of communication of this order.

15. The writ petitioner is directed to appear before the GST authority either through its authorized representative or through his learned advocate positively on or before January 24, 2025.

16. Both the respondent nos. 3 and 4 are directed to act on the server copy of this order.

17. With the aforementioned observations, the instant writ petition being **WPA 92 of 2024** is thus disposed of.

18. Liberty is given to the writ petitioner to communicate the server copy of this order to the respondent nos. 3 and 4 forthwith.

19. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)