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08.04.2025
Court No.2
BP

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 707 of 2025

Niranjan Paul
-versus-
Assistant Commissioner of State Tax, Siliguri Charge & Ors.

Mr. Boudhyan Bhattacharyya
Ms. Stuti Bansal
Ms. Keya Kundu
Ms. Prerana Dey
Ms. Chayna Kumary
..for the petitioner

Mr. Pretom Das
Ms. Rima Sarkar
..for the State

This writ petition is at the instance of a registered person under the West Bengal Goods and Services Tax Act, 2017 and is directed against the order passed by the Additional Commissioner of State Tax, (Appeals) Siliguri Circle, Siliguri, West Bengal dated March 17, 2025 affirming the order of the Deputy Commissioner of State Tax, Siliguri Charge, Siliguri dated April 15, 2024. The allegation against the petitioner is that the petitioner claimed Input Tax Credit in respect of supplies made by Global Bitumen for the period starting from March 14, 2019 till March 28, 2019 though the supplier was found to be non-existent and non-operational at the declared place of business.

The adjudicating authority by the order dated April 15, 2024 held that the petitioner is liable to pay the ineligible ITC claimed and availed by him along with interest under Section 50 and penalty under Section 73(9) of the WBGST / CGST Act, 2017 and the petitioner was directed to make the payment of the amount as specified in the said order within the time limit indicated therein.

Being aggrieved by such order the petitioner preferred an appeal being Appeal No. AD1907240072553 and the appellate authority by the order dated March 17, 2025 dismissed the said appeal thereby affirming the original order passed by the adjudicating authority.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that at the relevant point of time when the supply was made the supplier was in existence but subsequently the registration of the supplier was cancelled with retrospective effect and such cancellation of registration is the subject matter of a pending writ petition before the Hon'ble High Court at Calcutta. He submits that in replies given to the pre show cause notice as well as the show cause notice the petitioner produced the relevant documents in support of the transactions in question. He submits that he has produced the invoices, E-waybills, copies of RTGS, payment details, certificate regarding terms of delivery and transportation cost issued by the supplier, ledger account and a summary of GSTR 2A returns as well as the dealers search details from the official website of GST showing that the supplier of the petitioner has filed his returns in GSTR 3B and GSTR-1 for the relevant period.

He submits that in spite of production of the aforesaid documents, the adjudicating authority did not take into consideration such documents and arrived at a finding that there was no actual physical movement of the goods. He also submits that before the appellate authority the aforesaid documents including the GSTR 3B, GSTR 1 returns of the supplier were also produced. However, the appellate authority without considering such documents mechanically affirmed the findings of the adjudicating authority.

Ms. Sarkar, learned advocate appearing for the State submits that the petitioner failed to substantiate the actual physical movement of the goods by way of production of documents relating to payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof. She submits that in absence of the said documents being produced by the petitioner the authorities were justified in holding that the transaction was a bogus one as there was no actual physical movement of the goods in question.

Heard learned advocates appearing for the parties and perused the materials placed.

The documents prescribed in the statute and the rules framed thereunder for movement of the goods namely tax invoices, E-waybills etc. have been disclosed in the writ petition. The documents with regard to payment of transportation cost by the supplier and also that the supplier has paid the relevant tax and duties and filed the returns as prescribed under the statute have been annexed to this writ petition.

Upon going through the orders passed by the adjudicating authority as well as the appellate authority this Court finds that such documents were also produced by the petitioner before such authorities. Though the authorities both original as well as the appellate proceeded on the basis that there was no actual physical movement of the goods but the petitioner has produced documents before this Court in support of his contention that there was actual physical movement of the goods. Such documents which are available on records does not appear to have been considered by either of the authorities. Such authorities also did not return any finding as to whether the supplier complied with the provisions of the WBGST Act, 2017 with regard to payment of the tax and duty and filing of the returns for the relevant period.

The original authority as well as the appellate authority only laid emphasis on the documents with regard to payment of freight charges, toll tax receipt etc. without making any endeavour to look into the materials available on records with regard to movement of goods and also failed to enquire into as to whether the requirements for availing Input Tax Credit as prescribed in the statute has been complied with or not.

Though the registration of the supplier may have been cancelled subsequently but it is not in dispute that at the relevant point of time such registration was valid. The revenue has also not returned any finding whether the stand of the petitioner that the supplier has complied with the provisions under the GST Act to enable the petitioner to avail of the input tax credit is correct or not before arriving at a finding that the petitioner is liable to pay ineligible ITC claimed and availed by him along with interest and penalty.

The question as to whether the supplier has paid the tax and duty is also one of the relevant factor for the purpose of deciding as to whether the petitioner is entitled to avail of the Input Tax Credit for the transactions in question.

Such a factual adjudication has not been made either by the adjudicating authority or by the appellate authority.

This Court is, therefore, of the considered view that both the authorities failed to perform their duty vested upon them by the statute.

For such reason, this Court is inclined to interfere with the orders impugned. Accordingly the order of the appellate authority dated March 17, 2025 and the order of the adjudicating authority dated April 15, 2024 are set aside and quashed. The matter is remitted to the adjudicating authority. The adjudicating authority is directed to take into consideration the materials produced by the petitioner in support of his claim for availing the input tax credit and after scrutinizing the same and after verifying the authenticity of such documents shall decide the matter afresh by passing a reasoned order in the light of the observations made hereinbefore after giving an opportunity of hearing to the petitioner or his authorized representative.

The entire exercise shall be completed as expeditiously as possible but positively within a period of six weeks from the date of receipt of a server copy of this order.

With the above observations and directions, WPA 707 of 2025 is disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)