S/L 10
07.01.2025
Court. No. 3
Suvayan

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

WPA 2191 of 2024

M/s Berlia Enterprises
Vs.
State of West Bengal & Anr.

Mr. Dhiraj Lakhotia
Ms. Meghna Joshi
...for the petitioner.

Mr. Momenur Rahman
Mr. Pradip Sarkar
...for the State.

1. In this writ petition as filed under Article 226 of the Constitution of India the writ petitioner has prayed for issuance of appropriate writ against the respondent No. 2 authority for recalling and/or for cancelling and/or for rescinding the deficiency memo order dated 21.02.2024 a copy of which has been annexed at page no. 25 of the writ petition.

2. In course of hearing learned Advocate appearing on behalf of the writ petitioner submits before this Court that during the assessment year 2017-18 the writ petitioner had no liability to pay the CESS amount but on account of demand made by the respondent No. 2 authority such CESS amount was to be deposited by the writ petitioner and subsequently it was detected by the writ petitioner that the writ petitioner has no liability to pay such CESS amount and accordingly, the writ petitioner has prayed for refund of the CESS amount on

24.01.2022 which was not considered favourably on some flimsy ground as it would be reflected from Annexure-P3 to Annexure-P4 of the instant writ petition.

3. It is further submitted from the copies of the different deficiency memos as have been annexed with the instant writ petition it would reveal that the writ petitioner had assigned sufficient reason as to why such CESS amount was deposited and as to why the refund thereof has been claimed by the writ petitioner.

4. In her next fold of submission, learned Advocate for the writ petitioner submits before this Court that the time limit as provided in Section 39 (9) and Section 54 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'said Act of 2017') are not mandatory and those may be construed as directory in nature. It is thus submitted that the respondent No. 2 authority is, thus, duty bound to upload its order in the relevant portal so as to enable the writ petitioner to prefer an appeal challenging the order to be proposed to be passed by the respondent No. 2 authority.

5. *Per contra*, learned Advocate appearing on behalf of the respondent authority at the very outset also draws attention of this Court to Section 54 (1) and Section 39 (9) of the said Act of 2017. Attention of

this Court is drawn to different deficiency memos as annexed with the instant writ petition by the writ petitioner. It is contended on behalf of the respondents authority that from the said refund memos it would reveal that the writ petitioner has claimed refund for assessment month of September, 2017 and, therefore under Section 54 (1) of the said Act of 2017 the writ petitioner has to make an application before the expiry of two years from the said month and year. It further submitted that under Section 39 (9) of the said Act of 2017 the writ petitioner did not avail the opportunity to rectify his own mistake within the time limit as prescribed thereunder. It is thus submitted on behalf of the respondent No. 2 authority that the instant writ petition is devoid of merit and the same may be dismissed.

6. For effective adjudication of the instant *lis* this Court at the very outset proposes to look to the provision of Section 39 and Section 54 of the said Act of 2017 and those are reproduced hereunder in verbatim:

"*39*. Furnishing of return:

(1)....................

(2)...................

(3)....................

(4)...................

(5)...................

(6)...................

(7)....................

(8)....................

(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain or the actual date of furnishing of relevant annual return, whichever is earlier.

(10)...............

(11)................

54. Refund of Tax:

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in such form and manner as may be prescribed.

(2).............

(3).............
(4)..............
(5)..............
(6)..............
(7)..............
(8)..............
(8A)..............
(9)................
(10)..............
(11)...............
(12)................
(13)................
(14)................"

7. Keeping in mind the aforementioned legislative provision, if I look to the factual aspects of this case it reveals that it is the case of the writ petitioner that in the assessment year of 2017 he is not supposed to pay the CESS as according to the writ petitioner the same was wrongly demanded by the respondent No. 2 authority and since it has been detected subsequently that such demand was wrong, the writ petitioner made a claim of refund. Admittedly, such claim for demand was first made on 24.01.2022 which was not considered favourably by the respondent No. 2 authority on the ground of expiry of the requisite period under Section 54 Sub-Section (1) of the said Act of 2017. It further appears that even in the year 2024 similar prayer was made but such prayer was again not considered favourably by

the respondent No. 2 authority on the ground that relevant supporting documents were not attached.

8. Admittedly, while issuing the deficiency memo under challenge the respondent No. 2 had not uploaded its order of rejection in the relevant portal for which the writ petitioner is being deprived of preferring an appeal before the appropriate authority.

9. On perusal of the provision of Section 39 (9) read with Section 54 (1) of the said Act of 2017 it appears that admittedly legislatures in their own wisdom have set a cut off date for making an application either for correction of any omission or incorrect particulars as well as for claim of refund. On perusal of the annexures to the instant writ petition being copies of the different applications and the deficiency memos it appears to this Court that it has been contended before the respondent No. 2 authority by the writ petitioner that due to clerical mistakes he put SGST figure in CESS column and for which he seeks refund.

10. Whether the writ petitioner is entitled to get the refund or not that aspect completely falls under the domain of the respondent No. 2 authority but this Court considers that while rejecting the prayer for remand the respondent No. 2 ought to have assigned a reason by passing an appropriate order and should

upload the said order in the relevant portal so as to enable the writ petitioner to prefer an appeal before the appropriate authority.

11. In view of such, while disposing the instant writ petition this Court quashes the deficiency memo dated 21.02.2024 as issued by the respondent No. 2 authority with a direction to the respondent No. 2 authority to consider the refund application dated 05.02.2024 as made by the writ petitioner in accordance with law after giving opportunity of hearing to the writ petitioner and thereafter to pass a reasoned order on such application and to upload the same in the relevant portal forthwith.

12. With the aforementioned observations, the instant writ petition being WPA 2191 of 2024 is disposed of.

13. It is made clear that while disposing the instant writ petition this Court has not gone into the merit of the refund application dated 05.02.2024 and, therefore, the respondent No. 2, i.e., Deputy Commissioner of Revenue (WBGST), Bureau of Investigation Commercial Taxes, WB Siliguri Circle, Banijakar Bhawan, Parivahan Nagar, Matigara, Siliguri, Dist.-Darjeeling, West Bengal is directed is not to be influenced by any of the observation made hereinabove at the time of passing of the reasoned order as directed by this Court.

14. The respondent No. 2 is hereby directed to act on the server copy of this order.
15. Learned Advocate for the respondents is hereby requested to communicate the server copy of this order to the respondent No. 2 forthwith.
16. 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.)