25.06.26
18Ct. No.10
Sws.M

WPA 22309 of 2024

M/s A2Z Infra Engineering Ltd.
vs.
The Union of India &Ors.

Mr. Punit Agarwal
Mr. AvraMazumber
Ms. Alisha Das
Ms. Elina Dey
Ms. Rupamita Ghosh
Mr. Debdut Banerjee
….for the petitioner

Mr. Vipul Kundalia, Sr. Adv.
Mr. TapanBhanja
…for the Union of India
Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
….for the respondent No. 7/CGST

1. Affidavit of service filed in Court today is taken on record.

2. The petitioner challenges inter alia, the legality and sustainability of the order dated 29th April, 2024 for the assessment year 2018-19 passed under Section 73 of the said Act.

3. The core issues involved in the instant writ petition is whether the order dated 29th April, 2024 passed under Section 73 of the CGST Act, 2017 (hereinafter referred 'the said Act') for the assessment year 2018-2019 is liable to be quashed and set aside on the ground that the petitioner cannot be denied the benefit of the amendment introduced by way of insertion of sub-section 5 of section 16 of the said Act vide the

Finance (No. 2) Act. 2024, which retrospectively regularized the Input Tax Credit for financial year 2017-18 to 2020-21 if returns are filed up to 30th November, 2021.

4. It is submitted the Section 16(5) of the said Act, subsequently inserted with effect from 1st July, 2017 by amending Section 16, provides:

> ***"(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021."***

5. It is contended that the petitioner filed the GSTR-3B returns for July, 2018 to March, 2020 prior to 30.11.2021. By virtue of the inserted clause, as amended in section 16, the petitioner cannot be denied the benefit of such amendment. Hence, the input tax credit denial is illegal.

6. The petitioner submits that for the year 2018-19, respondent no. 7 imposed a demand of Rs. 4,22,88,416/- on the petitioner vide order in original dated 6.3.23.

7. Notwithstanding the insertion of the clause introduced by the Finance (No. 2) Act. 2024, the respondent authorities have issued the impugned order dated 30.04.2024 for the same assessment year when a demand of Rs. 4,22,88,416/- has already been imposed vide order dated 06.03.2023 for the period 2017-18 to 2019-20. Issuance of such fresh order dated 30.4.24 for assessment year 2018-19 amounts to double adjudication for the same cause of action.

8. In the present case the petitioner filed the return beyond due date but prior to 30th November, 2021.

9. In this context, the petitioner relies upon a judgment of a Co-ordinate Bench of this Court in the case of ***Hiranmoy Dutta vs. State of West Bengal*** reported in **[*2025] 172 taxmann.com 750 (Calcutta)*** at paragraph 6, which is reproduced below:

> ***"6. Having heard the learned advocates appearing for the respective parties and noting that in this case, the ITC had been disallowed by reasons of the petitioner filing the return in Form GSTR 3B beyond the due date, and on the basis of insertion of subsection (5) to Section 16, the returns filed by the petitioner which are in respect of the tax period from July, 2018 to March 2020 have now been regularized having regard to the new cut of date provided for in Section 16(5) of the said Act, I am of the view that the petitioner cannot***

be denied the benefit of the aforesaid amendment."

10. Learned counsel appearing for the respondent authorities vehemently opposes the same and submits that the case of the petitioner does not squarely fall within the inserted clause which has been introduced with effect from 1st July, 2017 and the order has already been passed by the authority concerned. The order in original dated 06.03.2023 has already attained its finality.

11. Section 16(5) cannot be invoked to reopen a concluded assessment. The benefit of the amendment is conditional upon the filing return by 30th November, 2011. The petitioner has failed to demonstrate such compliance.

12. It is further submitted by the respondent authorities that the order dated 29.4.24 is a rectification to the order in original dated 6.3.23 and not a fresh proceedings. Hence the bar of double jeopardy does not apply. The petitioner has failed to place on record any document to show that GSTR-3B for July 2018 to March 2020 have been filed upto 30.11.21. The benefit is factual and conditional.

13. Having heard the parties and upon perusing the record, this Court finds that the petitioner has made out a *prima facie*case and interference is warranted, at this stage.

14. This Court finds that by virtue of the inserted clause, as amended in Section 16, the petitioner cannot be denied the benefit of such amendment. The amendment is curative and retrospective from 01.07.2017.

15. The ratio in Hiranmoy Dutta (supra) is squarely applicable. Once returns are filed by 30.11.21, input tax credit for July 2018 to March 2020 is regularized.

16. In view of the above, the order dated 29th April, 2024 is hereby quashed and set aside and accordingly, the writ petition is allowed and disposed of.

17. The order in original dated 6.3.2023 shall be re-adjudicated by the Joint Commissioner in light of Section 16(5) of the said Act within 6 weeks after verifying the date of filing GSTR 3B. The respondent authorities are restrained from taking any coercive steps till the date of re-adjudication.

18. Since no affidavit has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

19. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)