

04.04.2023

Sl no. 6
Ct no. 2
P.M.

WPA 5803 OF 2023

**M/s. Wishery Online Private Limited
- Vs -
Union of India & Ors.**

Mr. Sujit Ghosh,
Ms. Mannat Waraich,
Ms. Anshika Agarwal,
Ms. Puja Sah,
Mr. Sourish Ray,
Ms. Disha Gurshaney
... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiqui,
Mr. D. Ghosh,
Mr. S. Mukherjee,
... for the State.

Mr. Asoke Kr. Chakraborty,
Ld. Addl. Solicitor General
Mr. Siddhartha Lahiri
... for Union of India

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 7th February, 2023 passed by the appellate authority concerned under the WBGST Act, dismissing the appeal of the petitioner and confirming the order of the adjudicating authority by holding that the petitioner had entered into an agreement with its recipients on a letter after giving post supply volume discount and issued GST Credit notes involving tax amount in question in order to reduce its value of supply during the

relevant period in contravention of Section 15(3) (b) (i) of the CGST/WBGST Act, 2017 and in this process appellant had made short payment of tax with the suppression of outward supply of taxable goods.

Petitioner is further aggrieved by the mode of action taken for recovery of the demand in question by debiting through petitioner's electronic credit ledger and cash ledger in contravention of Section 78 of the aforesaid Act within 24 hours from such impugned order of the appellate authority without providing any opportunity of hearing or any notice to the petitioner and without allowing the petitioner either to file the appeal within statutory period or granting time of three months from the date of service of such impugned order.

It is also the case of the petitioner that though the aforesaid impugned order of the appellate authority is further appealable before the Tribunal but the said forum has yet not been established by the Government and is not available at present for redressal of its grievance. Petitioner further submits that even if the said forum would have been available for filing the appeal against the impugned order, the respondent authority concerned could not have

recovered more than twenty per cent of the disputed tax during the pendency of such appeal.

Mr. Ghosh, learned advocate appearing for the respondent WBGST opposes this writ petition by contending that Assessing Officer is entitled to take action for recovery before the expiry of three months of passing of any adjudication or order passed in subsequent appeal, under proviso to Section 78 of the aforesaid Act.

He further submits that in this case recourse has been taken under Provision of Section 78 of the Act for the reason namely that petitioner does not exist in its place of registration and secondly that there is a mismatch of transaction. So far as the allegation of non-existence of petitioner at the registered place is concerned, prima facie it is not sustainable for the reason that neither there is any whispering about such allegation in the show-cause notice nor there is any finding in this regard in the impugned order of the first appellate authority. So far as the allegation of mismatching of the transaction is concerned, petitioner should be allowed to avail the forum for redressl of its grievance and it could not be remediless in spite of availability of such forum of

Tribunal under the statute which has not been established till date.

Since it is an admitted position that there is no further statutory appellate forum of Tribunal available at present for redressal of the petitioner's grievance and in view of the discussion made above I am of the view that petitioner has been able to make out a case for entertaining this writ petition for two reasons, firstly, at present petitioner has no alternative forum of the Tribunal for its remedy and secondly that the amount of recovery of demand is more than 20% of the disputed tax and the ground that the petitioner does not exist in its registered place of address was neither a part of the show-cause notice nor there is such finding in this regard by the first appellate authority.

Considering the facts and circumstances of the case and submission of the parties and discussion made above, I am of the view that issues involved in this writ petition deserve adjudication after calling for affidavits from the respondent.

Accordingly let the respondents file affidavit-in-opposition within four weeks, petitioner to file reply thereto, if any, within two weeks thereafter.

List this matter for final hearing in the monthly list of June, 2023 under the heading “Hearing”.

In the meantime respondent authority concerned is directed to refund the amount which has been collected from the petitioner in excess of 20% of the disputed tax, within a period of seven days from the date of communication of this order, on condition that petitioner will execute a bond in favour of the respondent authority concerned for the balance 80% of the disputed tax to be refunded without prejudice to the rights of both the parties in this writ proceeding.

(Md. Nizamuddin, J.)