

M/L 75
05.09.2024
sb

*IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE*

WPA 17914 of 2024

Prabir Adak
Versus
Deputy Commissioner of State Tax,
Howrah and Kadamtala Charge & Ors.

Ms. Rita Mukherjee
Mr. Abhijat Das
Ms. Aratrika Roy
... For the petitioner.

Mr. A. Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
Mr. D. Sahu
... For the State.

Mr. Vipul Kundalia
Mr. Anurag Roy
... For the CGST authorities

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

2. Mr. Das, learned advocate appearing for the petitioner, by placing reliance on the notifications dated 31st March 2023 and 28th December 2023 submits that the Central Board of Indirect Tax and Customs by the aforesaid notifications have extended the time limit as specified in Section 73(10) of the WBGST/CGST Act, 2017 (hereinafter referred to as the “said Act”) for issuance of the order under Section

73(9) of the said Act for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, relating to the period as specified in the said notifications.

3. By referring to Section 168A of the said Act the petitioner claims that the said section has been introduced with effect from 31st March, 2020, whereunder a power has been conferred on the government to extend the time limit prescribed or notified under the Act in special circumstances in respect of actions which cannot be completed or complied with due to force majeure. By referring to the order dated 30th March, 2024, it is submitted that the show cause cum demand notice under Section 73 of the said Act was issued on 30th December, 2023 in respect of the tax period April 2018 to March 2019. Since, there was no force majeure prevailing then, the respondents could not have relied on the aforesaid notifications for extending the time for initiation of proceeding in December 2023. According to the petitioner the aforesaid notifications as also the aforesaid show cause notice and the adjudication order had been issued in colourable exercise of power. A valuable right has already accrued in favour of the petitioner. In such circumstances, Mr. Das,

prays for stay of operation of the aforesaid order and the consequential demand.

4. Mr. Sanyal, learned advocate appearing on behalf of the State GST authorities submits that the present writ petition cannot be decided without calling for affidavits. He submits that the respondents should be granted opportunity to file affidavit-in-opposition.

5. Mr. Kundalia, learned advocate appearing on behalf of the CGST authorities also prays leave to file affidavit-in-opposition. He submits that the aforesaid issue has already been finally decided by the Hon'ble High Court of Allahabad in the case **of Graziano Trasmissioni vs. Goods and Services Tax Ors.**, reported in **2024 SCC Online All.3012**. Having regard to the aforesaid, he submits that there is no irregularity on the part of the respondents to enforce the demand made in Form GST DRC-07 dated 30th March, 2024.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although Mr. Kundalia, learned advocate appearing on behalf of the CGST authorities by placing the judgment delivered in the case of **Graziano Trasmissioni** (supra) would submit that the issue has been finally

decided but, I notice that this Hon'ble Court in identical set of facts in the case of **Arup Mallick vs. Commissioner of Commercial Taxes & Ors.**, in **WPA 12825 of 2024** on 30th July, 2024, has entertained a writ petition. Such matter is pending consideration before this Court.

7. Having regard to the aforesaid and since a jurisdictional issue has been raised, the writ petition shall be heard upon exchange of affidavits.

8. Let affidavit-in-opposition to the present writ petition be filed within a period of four weeks from date. Reply thereto, if any, be filed within three weeks thereafter.

9. Taking into consideration the fact that a prima facie case has been made out by the petitioner, and the fact that a coordinate Bench of this Court by an order dated 13th February, 2024 in an identical matter in the case of *OSL Exclusive Pvt. Ltd. v. Union of India & Ors.*, reported in 2024 SCC OnLine Cal. 2826 had been pleased to pass a limited interim order, I propose to stay the impugned demand made in Form GSTDRC-07 dated 30th March, 2024 as appearing at annexure P-8 to the writ petition till the end of March, 2025 or until further order whichever is earlier.

10. Liberty to mention after expiry of the period
for exchange of affidavits.

(Raja Basu Chowdhury, J.)