

WPA 27166 of 2024

**Rajshree Recycling Metals Private Limited & Anr.
Vs.
Assistant Commissioner of Revenue & Ors.**

Ms. Rita Mukherjee
Mr. Abhijat Das

... ... for the petitioner

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. N. Chatterjee
Mr. S. Sanyal
Mr. T. Chakraborty

... ... for the State

Mr. Debasish Chowdhury
Mr. Amit Sharma

... ... for the Union of India

Affidavit of service filed in Court be kept with the record.

Learned counsel appearing for the petitioner is requested to serve a copy of the writ petition on the office of the learned Advocate General, State of West Bengal as well as the Senior Central Government Advocate, Ministry of Law & Justice (Office of Learned Additional Solicitor General of India) within a week.

Ms. Mukherjee appears for the petitioner, Mr. Ray appears for the State and Mr. Chowdhury appears for the Union of India.

According to the petitioner, ordinarily no proceeding for the tax period 2019-20 could have been initiated against the petitioner after three years from due date of

furnishing returns, however, in the present case the respondents on the strength of the notifications dated 5th July, 2022 and 31st March, 2023 issued by the Central Board of Indirect Tax and Customs, whereby the time limit as specified in Section (10) of Section 73 of the said Act for issuance of the order under sub-Section 9 of Section 73 in the said Act for recovery of Tax not paid or short paid or input tax credit wrongly availed or utilized relating to the period as specified in the said notification, had been extended, proceeded with the determination of liability for the Tax period April 2019 to March, 2020. The said period for passing an order under Section 73(9) of the said Act has been further extended by a notification dated 28th December, 2023.

Ms. Mukherjee, learned advocate appearing for the petitioner by referring to Section 168A of the said Act submits 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 said Act, in special circumstances in respect of actions which cannot be completed or complied with due to force majeure. The aforesaid notifications could not have been relied on for initiation of fresh proceeding. By referring to the order dated 3rd April, 2024 it is submitted that when the show cause cum demand notice under Section 73 of the said Act was issued on 20th February, 2024, since, there was

no force majeure prevailing at that time, the respondents could not have relied on the aforesaid notifications for extending the time for initiation of proceeding in the year 2023. In any event based on the above notifications no fresh proceedings could have been issued. 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. In such circumstances, Ms. Mukherjee prays for a stay of the adjudication order dated 22nd August, 2024 and the consequential demand.

Mr. Ray and Mr. Chowdhury pray for a direction to file affidavit-in-opposition.

Let affidavit-in-opposition be filed within four weeks, reply, if any, be filed within two weeks thereafter.

Taking into consideration the fact that a jurisdictional issue has been raised and 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. Versus Union of India & Ors. reported in 2024 SCC Online Cal 2826 had been pleased to pass a limited interim order, I do hereby stay the impugned demand made in the order dated 22nd August, 2024 till 31st January, 2025 or until further order whichever is earlier.

Let this matter appear under the heading “For Hearing” in the Monthly list of January, 2025 along with WPA 12071 of 2024.

(Rajarshi Bharadwaj, J.)