

Item No.5

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 13.07.2022

DELIVERED ON: 13.07.2022

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA 1205 of 2022

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VERSUS

**Assistant Commissioner, Bureau of Investigation (North Bengal),
Headquarters, & Ors.**

Appearance:-

Mr. Sandip Choraria,

Ms. Esha Acharya

.....for the Petitioner

Mr. Subir Kumar Saha, Ld. A.G.P.,

Mr. Bikramaditya Ghosh

.. for the State.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This writ petition has been filed for issuance of a writ of mandamus to set aside and quash the order dated December 3, 2021 passed by the Deputy Commissioner of Sales Tax, Bureau of Investigation being the 2nd respondent herein and to refund the

amount excessively debited from the Electronic Credit Ledger Account of the petitioner on March 7, 2022.

2. Mr. Choraria, learned Advocate for the petitioner upon instructions from his client submits that he has instructions not to press the relief claimed in prayer (a) to the writ petition, which runs as follows:-

"(a) A Writ of and/ or order and /or direction in the nature of Mandamus commanding the respondents, their servants and/or agents to forthwith withdraw, recall, cancel and / or rescind the impugned Orders dated 03.12.2021 passed by Respondent Nos.2 and to refrain from taking any adverse actions against the said orders till the disposal of the said application;"

3. Accordingly, such prayer is rejected as not pressed.

4. The principal grievance of the writ petitioner in this writ petition now is that an amount of Rs.423,96,938/- comprising the Central tax, State tax and cess has been debited from the electronic credit ledger account of the petitioner. The petitioner claims that he has preferred a statutory appeal before the Joint Commissioner of Sales Tax,

Siliguri Circle being the respondent no.3 herein challenging the adjudication order dated December 3, 2021 passed by the Deputy Commissioner of Sales Tax, Bureau of Investigation, North Bengal Headquarters being the respondent no.2 herein. The further case of the petitioner is that the petitioner has deposited a further sum of Rs.8,60,594/- on April 5, 2022 on account of CGST, SGST and cess which is 10% of the amount in dispute in terms of Section 107(6)(b) of the Central Goods and Services Tax Act, 2017 (for short, "CGST Act").

5. Mr. Choraria, learned Advocate for the petitioner submits that since the petitioner has approached the appellate authority under the statute and has complied with the provisions regarding deposit of a portion of the disputed amount of tax, the respondent authorities could not have debited the aforesaid amount from the electronic credit ledger account of the petitioner. He further draws attention of the Court to the provisions laid down in sub-Section (7) of Section 107 of the CGST Act and submits that upon payment of the amount in terms of sub-Section (6) of the said Section, the recovery proceedings for the balance amount shall be deemed to be stayed. Thus, according to Mr. Choraria, the respondent authorities acted illegally and arbitrarily by debiting the aforesaid amount from the electronic credit

ledger account of the petitioner. He further submits that the petitioner is suffering severe prejudice as he is being prevented from utilizing the balance in his electronic credit ledger account though, as per law, he is entitled to utilize the same.

6. Mr. Saha, learned Additional Government Pleader duly assisted by Mr. Ghosh, learned Advocate appears for the State and submits that the petitioner preferred the appeal after expiry of the statutory period of limitation and the concerned Recovery Officer cannot be faulted with for debiting the amount from the electronic credit ledger account of the petitioner as no information was available in the portal as to whether the petitioner has preferred any appeal against the order of adjudication.

7. Heard the learned Advocates for the parties and considered the materials placed.

8. The petitioner has preferred an appeal before the appellate authority under the CGST Act against the order of adjudication dated December 3, 2021. There is some delay in preferring the said appeal and the learned Advocate for the petitioner contends that the period of limitation being extended by the Hon'ble Supreme Court in a suo motu writ

petition being **Miscellaneous Application No.29 of 2022 in Miscellaneous Application No.665 2021 in SMW (C) No.3 of 2022**, the respondent authorities cannot contend that the appeal was filed beyond the prescribed period of limitation. However, this Court does not deem it necessary to decide such issue at this stage as this Court is now concerned as to whether there has been substantial compliance of the provisions laid down under sub-Section (6) of Section 107 of the CGST Act as the scope of this writ petition is whether the respondent authority can be directed to refund the amount debited from the Electronic Credit Ledger Account of the petitioner. Since it is not in dispute that the petitioner has complied with the provisions laid down in Section 107(6)(b) of the CGST Act, it necessarily follows that the recovery proceedings for the balance amount shall be deemed to be stayed.

9. Therefore, the interest of the revenue has been well protected in the manner as specifically provided in the statute. This Court is thus of the considered view that the concerned respondent authority should be directed to restore back the amount which was debited from the electronic credit ledger account of the petitioner on March 7, 2022 which is

appearing from the document annexed as Annexure "P/6" at page 70 of the writ petition.

10. Accordingly, the concerned respondents are directed to restore the aforesaid amount, which was debited from the electronic credit ledger account of the petitioner on March 7, 2022 forthwith but positively within a period of two weeks from date.

11. With the above directions, WPA No.1205 of 2022 stands allowed without, however, any order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Naren, AR(Ct.)