IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

4 18.09.2023
Ct. No. 2
SK. & S.Bag

WPA/2146/2023

M/S MAKHAN LAL SARKAR AND ANR.
VS
THE ASSISTANT COMMISSIONER OF REVENUE,
STATE TAX B.I. AND ORS.

Mr. Anupa Banerjee
Mr. Salok Sah .....for the petitioner.

Mr. Subir Kr. Saha
Mr. B. Ghosh
Mr. P. Das .....for the State.

Mr. Ghosh is requested to represent the respondent authorities. The services of Mr. Ghosh be regularized by the State Authorities.

The grievance of the petitioner is directed against an order dated 28 June, 2023 passed by the respondent no.2, dismissing an appeal filed under Section 107 of the West Bengal Goods and Services Tax Act, 2017(WBGST) read with the corresponding sections of the Central Goods and Service Tax Act, 2017 (CGST).

Briefly, the petitioner no.1 is a registered partnership firm inter alia engaged in business of trading of bidi leaves. The petitioner no.1 is registered with both the CGST and WBGST authorities. The relevant period involved in the subject matter of this petition is for the year 2017-2018. During the course of business, the petitioner

had purchased bidi leaves from several suppliers namely M/s. Tirthankar Como Trade (P) Ltd., Joy Trading Company, Sri Babu Bhai Dhanji Bhai Manek & Co. and Amir Trading Company.

In or about January, 2021 a physical inspection was conducted at the premises of the petitioner. Thereafter, a proceeding under section 73 of the WBGST Act was initiated against the petitioner and a show cause notice dated 4 August, 2021 was served on the petitioner. By an order dated 7 June, 2022 the claim of the petitioner for benefit of Input Tax Credit (ITC) was rejected. By an order dated 7 June, 2022 the respondent no.1 rejected the claim of the petitioner for ITC and directed the petitioner to pay penalty alongwith interest under the WBGST Act. Being aggrieved by the order dated 7 June, 2022 the petitioner preferred an appeal. Notice of hearing of the appeal was duly served granted on the petitioner. However, the petitioner chose not to appear. Ultimately, by an order dated 28 June, 2023 the respondent no.2 dismissed the appeal and upheld the order passed by the adjudicating authority under section 73 of the Act on the ground that there was a mismatch of the ITC claimed in Form GSTR-3B and the same was not reflected in FORM GSTR-2A. Hence, this writ petition challenging the impugned order dated 28 June, 2023 dismissing the appeal.

The petitioner assails the impugned order primarily on the ground that the same has been passed in violation of the principles of natural justice. On merits, it is submitted that the respondent authorities have failed to take into consideration Circular No.183/15/2022-GST dated 27 December, 2022 whereby certain clarifications issued on the respondent authorities have not been followed. It is also contended on behalf of the petitioner that the impugned order has been passed without considering the grounds of appeal and the documentary evidence relied on by the petitioner. It is also contended that in the case of supplies, it was beyond doubt that the petitioner purchased leaves from the suppliers by paying the GST component. There are no reasons for disallowing the claim for ITC on the ground of an inadvertent error of one of the suppliers in not mentioning the GSTIN number of the petitioner in the invoice. Moreover, an inadvertent printing error of the GSTIN number in the case of Joy Trading & Co. cannot be a ground for rejecting the claim of the petitioner. In the case of Amir Trading Co. Ltd., the supplier in showing the respective sales in B2B has shown the same B2C. Thus, the finding in the impugned order that there was a mismatch and the same could not be reconciled is without any basis. It is contended that such mismatch could have

easily been rectified by the respondent authorities. In this background, the impugned order is unsustainable and is liable to be set aside. In support of their contentions the petitioner relies on the decisions in *LGW Industries Ltd. vs. Union of India, [2022] 134 Taxmann.com. 42 (Calcutta), Gargo Traders vs. Joint commissioner, Commercial Taxes (State Tax), [2023] 151 Taxmann.com. 270 (Calcutta)* and *Suncraft Energy (P.) Ltd. vs. Assistant Commissioner, State Tax [2023] 153 Taxmann.com. 81 (Calcutta).*

On behalf of the respondent authorities, it is contended that the petitioner having deliberately and consciously failed to avail of the repeated opportunities provided by the respondent authorities cannot raise any of the disputes before this Court. There has been no violation of natural justice. On the contrary, the matter was adjourned on repeated occasions by the respondent no.2 and the petitioner deliberately chose to be unrepresented.

Notice of personal hearing of the appeal was issued on 13 July, 2022 to the petitioner. The next hearing was fixed on 1 September, 2022. The authorized representative of the appellant appeared and produced certain invoices and sought for an adjournment. The next hearing was fixed on 19 October, 2022, when the petitioner chose to be

unrepresented. Thereafter, the matter was again fixed on 9 November, 2022. However, the petitioner was not present on that day either. Being left with no option, the respondent no.1 proceeded to dispose of the appeal ex parte on the basis of the available records.

One of the facets of the principle of natural justice is the concept of *audi alteram partem* or the rule of fair hearing. There can be no precise definition or strait-jacket formula which is to be followed in all cases. Notice of hearing is regarded as the minimum obligatory condition in such cases. The underlying principle which is to be followed in such cases is one of fairness. The petitioner had been given notice of personal hearing and repeated opportunities i.e. on 11 August, 2022, 1 September, 2022, 19 October, 2022 and 9 November, 2022 respectively. However, the petitioner chose not to appear leaving the respondent no.2 with no other option but to pass an ex parte order. Fairness is not a one way street. An assessee cannot have an implacable approach in refusing to appear before the respondent authorities and then complain of violation of the principles of natural justice. This would defeat the provisions of the Act and make the entire adjudicatory process before the Authority nugatory. In the circumstances, there is no merit in the contention raised on behalf of

the petitioner that the impugned order has been passed in violation of the principles of natural justice.

Nevertheless, the respondent no.2 even though disposing of the appeal ex parte was obliged to take into consideration and proceed on the basis of records and deal with the appeal on merits in accordance with law. The reconciliation process which the respondent no.2 has failed to do on the grounds of documentary evidence not being available is *prima facie* not tenable. Any mismatch ought to have been attempted to be ascertained from the records of the respondent authorities and their online portal. Moreover, the respondent authorities have not even adverted to the Circular dated 27 December, 2022 which inter alia clarify the approach to be followed by the Department in cases where the supplier had wrongly reported the said supply as B2C instead of B2B in FORM GSTR-1 due to which the relevant supply was not get reflected. Similarly, the declaration of the wrong GSTIN of the recipient in the FORM GSTR-1 ought to have been dealt with in terms of the said Circular. There is also absence of reasons in the impugned order in rejecting the contentions raised by the appellant.

In such circumstances, the impugned order is unsustainable and set aside.

The appellant is directed to deposit twenty (20) per cent of the tax in dispute in addition to the amount paid under sub-section (6) of section 107 of the Act. Upon such payment being made within 7 days from the date of passing of this order, the respondent no.2 shall afford an opportunity of hearing afresh to the petitioner and proceed to dispose of the appeal in accordance with law. In default of payment, the respondent authorities are at liberty to initiate recovery proceedings in terms of the impugned order. The aforesaid exercise should be completed within eight weeks from the date of communication of this order.

It is made clear that any finding or observation insofar as the merits of the case is concerned are *prima facie* in nature and the Appellate Authority is at liberty to consider the appeal filed by the petitioner afresh without being influenced by any observation or finding insofar as the merits of the case are concerned.

With the aforesaid directions, WPA 2146 of 2023 stands allowed.

(Ravi Krishan Kapur, J)