

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 42 of 2022

The ICAFI University Sikkim,
Ranka Road, Lower Sichey,
Through the Vice Chancellor,
Gangtok-737101, Sikkim.

..... Petitioner

Versus

1. Union of India,
Through Joint Secretary, the Tax Research Unit,
Department of Revenue, Ministry of Finance,
North Block, New Delhi- 110 001.
2. The Commissioner, CGST & Central Excise
Siliguri Commissionerate,
Central Revenue Building, 4th Floor,
Haren Mukherjee Road
Hakimpara, Siliguri-734001.
3. The Joint Commissioner of CGST & Central Excise
Siliguri Commissionerate,
Central Revenue Building, 4th Floor,
Haren Mukherjee Road
Hakimpara, Siliguri-734001.
4. The Assistant Commissioner of CGST & Central
Excise
Gangtok Division, Near District Court,
Indira Bye-Pass Road, Sichey,
Gangtok 737101.

.....Respondents

**Petition under Article 226 and 227 of the Constitution of
India.**

Appearance:

Mr. G. Shivadass, Senior Advocate with Mr. Prashanth
Shivadass, Mr. Taraka Srinivas and Ms. Anusha Basnet,
Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India
assisted by Ms. Natasha Pradhan, Advocate for
Respondents.

Date of hearing : 02.03.2023

J U D G M E N T (O R A L)

Bhaskar Raj Pradhan, J.

1. The petitioner ICFAI University Sikkim is aggrieved by a communication bearing No. C No: V(19)04/ADJ/ST/COMM/SLG/2016/1176 dated 23.01.2018 issued by the Joint Commissioner of CGST and Central Excise (respondent no.3). This impugned communication referred to an application for rectification of mistake dated 12.01.2018 in the Order-in-Original No.02/ST/SLG/17-18 dated 09.05.2017. Pursuant to the impugned communication it transpires that a demand Notice bearing C No. GEXCOM/TAR/MISC/55/2022/402 dated 12.05.2022 was issued to the petitioner under section 174(2) of the CGST Act, 2017.

2. The learned Senior Advocate appearing for the petitioner submits that the impugned communication is in the teeth of section 74 (1) of the Finance Act, 1994 (74 Act) which provides *“with a view to rectifying any mistake apparent from the record, the Central Excise Officer who passed any order under the provisions of this chapter may, within two years of the date on which such order was passed, amend the order.”*

3. According to the learned Senior Counsel for the petitioner the provision makes it apparent that it is the Commissioner who passed the Order-in-Original who was required to deal with an application for rectification of mistake under section 74 Act.

4. A perusal of the impugned communication dated 23.01.2018 reflects that it was the Joint Commissioner who had communicated to the petitioner stating that the Commissioner of CGST Siliguri Commissionerate was of the opinion that the points raised in the application were not covered under section 74 Act and that the application for rectification of mistakes stood disposed of. Quite evidently there is no written order of the learned Commissioner CGST disposing the application for rectification of mistake as required under section 74 Act.

5. The learned Deputy Solicitor General of India appearing for the respondents fairly submit that in such view of the matter it would be appropriate if the application for rectification of mistake is considered by the learned Commissioner and disposed by a written order.

6. In view of the submissions made by the learned counsel for the parties the impugned communication dated 23.01.2018 passed by the Joint Commissioner is *set aside* and the learned Commissioner, CGST, Siliguri

Commissionerate is directed to take on board the application for rectification of mistake filed by the petitioner, consider the same and dispose it by a written order. Until such time the learned Commissioner considers and disposes the application for rectification of mistake filed by the petitioner, the demand order dated 12.05.2022 shall not be pursued by the respondents. The writ petition is disposed of accordingly.

7. The learned Senior Counsel for the petitioner also points out that on 29.09.2022, as is apparent from the order passed by this Court, the learned counsel for the petitioner seem to have, by mistake, wrongly submitted that no opportunity of personal hearing had been granted to them before the final decision was taken which apparently was not correct. As this court has taken the view as above nothing material turns on it. Therefore, we leave the matter at that.

8. Pending interlocutory application is also disposed of accordingly.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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