

01.10.2024
Item No. 05
Ct. No. 01
AN/RP

MAT 1697 of 2024
with
IA No. CAN 1 of 2024
CAN 2 of 2024

Agarwal Steel Private Limited
Vs.
The Superintendent of Central Tax, Range-III,
Bally-I, Division, Howrah CGST & Central Excise
Commissionerate & ors.

Mr. Sandip Choraria
Mr. Sukalpa Seal
Mr. Rishav Manna

... For the Appellant

Mr. Tapan Bhanja

... For the respondent no 1

1. There is a delay of 107 days in filing the instant appeal. Sufficient grounds have been shown and we are satisfied with the reasons given for not preferring the appeal within the period of limitation. Hence, the application being CAN 1 of 2024 is allowed and disposed of. Delay in filing the appeal is condoned.

2. Heard learned counsel for the parties at length.

3. This intra-Court appeal filed by the writ petitioner is directed against an order dated 02.04.2024 passed in WPA 7426 of 2024. The appellant had challenged the order of adjudication

passed by the CGST & CX Kolkata North Commissionerate dated 02.11.2023. Thus, several issues were raised on the merits of the matter.

4. The substantial ground on which the order was challenged is that the Department having passed an order on 03.07.2018 on the very same issue and having held that out of the total amount of TRAN-1 Credit applied by the petitioner for a sum of Rs. 1,01,16,814/-, the Officer scrutinized the documents submitted by the assessee and held that the assessee is eligible only for TRAN-1 Credit taking TRAN-1 Credit of Rs. 99,19,582/-. There was also a direction to reverse the differential amount of Rs. 1,97,232/- at the earliest and submit documents. The assessee accepted the order dated 03.07.2018 and reversed the amount of Rs. 1,97,232/- and improved thereof and produced a copy of Form GST DRC 03 dated 27.06.2023. Subsequently, another Officer in the same rank viz. the Superintendent of Tax issued a notice on 01.11.2021 stating that he proposes to verify the Transitional Credit tariff forwarded in the TRAN-1 return and accordingly called for certain documents. This was followed by another notice dated 11.02.2022. Subsequently, a show cause-cum-demand notice dated 01.06.2023 was issued alleging that calling upon the assessee to show cause as to why the inadmissible income tax

return of Rs. 1,01,16,814/- should not be demanded and recovered from the assessee in terms of Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017; why the interest at applicable rate should not be demanded and recovered in terms of Section 50 of the CGST Act, 2017 and why penalty should not be imposed under Section 74 read with Section 122(2)(b) of the CGST Act, 2017. The assessee further submitted that their reply dated 04.07.2023 dealing elaborately on the merits but raising a preliminary objection stating that already the very same issue was adjudicated and the authority, that too in the same rank, had passed an order on 03.07.2018 mentioning the eligible TRAN-1 Credit with a further direction to reverse the differential amount and the assessee having accepted the same, reversed the differential amount afresh cannot be initiated on the same set of facts. Though such stand was taken, the adjudicating authority in its order dated 02.11.2023, which was impugned in the writ petition, has not dealt with the same issue. The adjudicating authority holds that despite several opportunity given by the Superintendent of Sales Tax, Range-1, B.B.D.Bag-1 Division at the time of personal hearing, the assessee failed to submit the documents to prove veracity of the input credit taken on semi-finished and finished goods. The adjudicating

authority ought to have considered the effect of the order passed by the Superintendent of Sales Tax dated 03.07.2018 wherein after scrutiny of the documents, the Officer mentioned about the eligible amount and TRAN-1 Credit which can be availed by the appellant.

5. Thus, it requires to be seen as to whether the order is an outcome of non-application of mind and whether the order has not taken into consideration the documents which ought to have considered. These issues ought to have been decided in the writ petition, however, the writ petition has been dismissed solely on the ground of availability of alternate remedy. The preliminary ground raised by the assessee in challenging the adjudication order would not involve adjudication into facts and because all that the writ court can go into is as to what effect of the earlier order dated 03.07.2018 and subsequent proceeding can be drawn on the same set of facts. Therefore, we are of the view that the writ petition should be heard afresh after affidavit-in-opposition is filed by the Department.

6. For the reasons given hereinabove, the appeal stands **allowed** and the order passed in the writ petition is set aside and the writ petition is restored to its original file and number before the learned Single Judge. The appropriate respondent

shall file their affidavit-in-opposition within a period of six weeks from date. Reply, if any, be filed within two weeks thereafter. The writ petition be listed before the learned Single Judge after eight weeks from date.

7. In the light of the above order, the respondent Department are directed not to initiate any coercive action against the appellant for recovery of the amount mentioned in the adjudication.

8. Consequently, connected application, if any, stands allowed.

(T. S. Sivagnanam)
(Chief Justice)

(Bivas Pattanayak, J.)