Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 30.09.2022

DELIVERED ON:30.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.1595 of 2022
With
I.A. No.CAN 1 of 2022

M/s. R. P. Buildcon Private Limited & Anr.

Vs.

The Superintendent, CGST & CX, Circle – II, Group - 10 & ors.

Appearance:-
Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah **..... for the appellants.**

Mr. K. K. Maiti **.... for the respondent no.1.**

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. This intra-Court appeal is directed against the order dated 19th September, 2022 in W.P.A. No.20025 of 2022 filed by the appellants. The said writ petition was filed praying for issuance of a writ of certiorari to quash the notices issued by the concerned CGST and CX Headquarters, Anti Evasion, Kolkata North Commissionerate insofar as it relates to financial year 2017-2018 to 2019 – 2020 for which an audit under Section 65 of the CGST Act, 2017 has been conducted by the superintendent of concerned CGST and CX, Circle – II, Kolkata Audit – I Commissionerate; for issuance of a writ of certiorari to quash the notices issued by the Superintendent of CGST & CX, Range – III, Barrackpore Division, Kolkata North Commissioenrate insofar as the same relates to the financial year 2017-2018 to 2019-2020 for which an audit under Section 65 of the CGST Act, 2017 has been conducted by the Superintendent of CGST & CX, Circle - II, Kolkata Audit – I Commissionerate and for issuance of a writ of mandamus to declaring the scrutiny of returns under Section 61 of the CGST Act, 2017 cannot be done once an audit under Section 65 of the CGST Act, 2017 has been conducted by the department for the same tax period.

2. The learned Single Bench by the impugned order had dismissed the writ petition on the ground that the proceedings are in the nature of show cause notice. Aggrieved by such order, the appellants are before us.

3. We have elaborately heard Mr. Ankit Kanodia, learned Advocate appearing for the appellants and Mr. K. K. Maiti, learned standing counsel for the respondents.

4. As could be seen from the records placed before this Court, we find that three wings of the same department are proceeding against the appellants for the very same period, i.e. financial years 2017- 2018, 2018-2019 and 2019-2020. The first of the department which had taken action was the Audit Commissionerate, which had issued notice under Section 65 of the CGST Act, 2017 dated 9th November, 2021. It is submitted that the appellants had furnished the details as called for in the said notice and also responded to the intimation dated 5th January, 2022 / 6th January, 2022for conducting GST audit.

5. The learned Advocate for the appellants submitted that four issues were pointed out for the said period, out of which two issues as pointed out by the audit was accepted by the appellants and the necessary tax and interest were remitted and for the remaining two issues, the appellants had submitted their

response to the notice and the matter has not been taken to the logical end. In the meantime, the other two wings of the department, viz. Anti Evasion wing as well as the Range Office have also proceeded against the appellants by issuing notices for the very same period for which audit proceedings under Section 65 of the Act has already commenced.

6. The learned standing counsel appearing for the respondents, on instructions, submitted that the three wings of the department are proceeding against the appellants because the Range office was not aware about the proceedings initiated by the Audit Commissionerate and the Anti Evasion also was not aware of the same. It is not clear as to why in the present days of electronic communications available in the department, such parallel proceedings can be conducted by three wings of the same department for the very same period.

7. Therefore, we are of the view that since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end. The proceedings initiated by the Anti Evasion and Range Office for the very same period shall not be proceeded with any further.

8. Accordingly, the appeal along with the connected application stand allowed and the order passed by the learned Single Bench is set aside and there will be a direction to the first and fourth respondents to issue show cause notice to the appellants within a period of six weeks from the date of receipt of the server copy of this judgment and order and afford a reasonable opportunity to the appellants to submits their reply along with documents. Thereafter, an opportunity of personal hearing be granted to the authorised representative of the appellants either in physical or in virtual mode. Subsequently, a speaking order be passed on merits and in accordance with law within a period of three weeks from the date on which the personal hearing is concluded.

9. The second and third respondents are restrained from proceeding further against the appellants in respect of the very same period for which already action has been initiated by the first and fourth respondents, i.e. for the financial years 2017-2018, 2018-2019 and 2019-2020.

10. It is made clear that the above direction is confined only for the period covered for the financial years 2017- 2018, 2018-2019 and 2019-2020. If there are any other material required by the second and third respondents for a department assessment

period, it will be well open to them to put the appellants on notice in that regard.

11. There shall be no 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.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)