

08 21.04.2023
RP Ct. No. 01
AN

MAT 90 of 2023
with
IA No. CAN 1 of 2023

SSB Petro Products & Ors.

Vs.

The Assistant Commissioner, State Tax, Shibpur Charge & Ors.

Mr. Himagshu Kr. Ray
Mr. Nitish Bhandary

... For the Appellant

Mr. A. Ray, Ld. G.P.
Mr. T.M. Siddiqui
Mr. D. Ghosh
Mr. D. Sahu

... For the State

1. This intra-Court appeal is directed against the order dated 16.01.2023 passed in WPA 29 of 2023. The appellants had challenged the order passed by the Senior Joint Commissioner, State Tax, Howrah Circle dated 21.11.2022 rejecting the appeal filed by the appellant as time barred. On a cursory glance of the order passed by the appellate authority one gets impression that the order is perfectly legal and valid as the appeal was hopelessly time barred and the authority had no power to condone the delay in filing the appeal. However, on a closer scrutiny of the facts and circumstances of the case, it would lead to a different conclusion. The appellants were served with an intimation of the tax ascertained as being payable under Sections 73(5) and 74(5) of the Goods & Services Tax Act dated 05.03.2021. In the said intimation which is in Form GST DRC-01A, the grounds and quantification were mentioned and the appellants were advised to pay the tax

ascertained along with the amount of applicable interest and penalty under Section 74(5) of the Act by 12.03.2021 failing which show cause notice will be issued under Section 74(1) of the Act. The appellants filed their reply to the show cause notice on 08.03.2021. The matter was not adjudicated further and kept pending. The said intimation dated 05.03.2021 was issued by the first respondent. Thereafter, the second respondent issued Form GST DRC-01 (under Rule 142(1)(a) of the GST Rules) dated 16.09.2021 which is the summary of the show cause. The summary states that the copy of the detail notice is enclosed as a separate attachment. The case of the appellant is that he was not aware of the said notice for being uploaded in the portal and they came to know of the same only after the sum of Rs. 1,84,930/- was paid from their electronic credit ledger and immediately thereafter, the appellants applied for a copy of the order and thereafter preferred the appeal but by then the period of limitation for filing the appeal had expired.

2. The crucial issue would be as to whether the second respondent could have initiated fresh proceedings when the first respondent was seized of the matter and intimation in Form GSTDRC-01 dated 05.03.2021 was issued to which the appellants had submitted their reply dated 08.03.2021 and the said reply was neither considered nor rejected and the matter was kept pending. The option which was available to the first respondent was to consider the representation/reply and if not satisfied, could have

proceeded to issue show cause notice under Section 74(1) of the Act which option the first respondent did not exercise and the matter was left to linger. Thus, the preliminary proceedings could not have been initiated by the second respondent when proceeding initiated by the first respondent for the very same amount on the very same allegation was not taken to the logical end. When the statutory appeal was pending before the appellate authority, the first respondent had dropped the proceedings. It is very crucial to note that from the final report of the first respondent it is seen that the proceedings was closed by the first respondent only on 24.01.2023. Thus, for all purposes, it is deemed that the first proceedings initiated by the first respondent pursuant to intimation dated 05.03.2021 had attained finality only on 23.01.2022 and on the said date, the appeal as against the second proceedings initiated by the second respondent was already pending before the appellate authority.

3. Therefore, considering the peculiar facts and circumstances of the case, we are of the view that the appeal should not be treated to be as time barred, more particularly, when the appellants had responded to the first intimation dated 05.03.2021 and submitted their reply on 08.03.2021, and it was not considered and disposed of. Therefore, the issue as to whether the appellants did not notice the uploading of the Form GST DRC-01 dated 16.09.2021 from the portal or not has become an academic issue and in the peculiar facts and circumstances of the

case, we are of the considered view that the appeal should be decided on merits and in accordance with law.

4. In the result, the appeal and the writ petition stand **allowed** and the order passed by the appellate authority viz. Senior Joint Commissioner, State Tax, Howrah Circle dated 21.09.2022 stands set aside and the appeal is restored to the file and number of the appellate authority with a direction to hear and dispose of the appeal on merits and in accordance with law. We also make it clear that this order has been passed considering the facts and circumstances of the case.

5. Learned counsel for the appellant submitted that whatever the excess amount which has been swiped off from the electronic credit ledger of the appellants, should be re-credited and such prayer can be made before the appellate authority and it shall be considered by the appellate authority. Needles to state that the appellants and/or their authorized representative shall be afforded with an opportunity of personal hearing.

6. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam)
Acting Chief Justice

(Hiranmay Bhattacharyya, J.)