

17 25.06.2024
to Ct. No. 01
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AN
RP

FMA 604 of 2024
With
IA No: CAN/1/2024
Sarkar Diesel & Anr.
Vs.

The Deputy Commissioner, State Tax, Krishnagar
Charge & Ors.

with
FMA 616 of 2024
with

IA No: CAN/1/2024
Sarkar Diesel & Anr.
Vs.

The Deputy Commissioner, State Tax, Krishnagar
Charge & Ors.

with
FMA 617 of 2024
with

IA No: CAN/1/2024
Sarkar Diesel & Anr.
Vs.

The Deputy Commissioner, State Tax, Krishnagar
Charge & Ors.

Mr. Himangshu Kumar Ray,
Mr. Arup Dasgupta,
Mr. Paban Kumar Ray,
Mr. Bhaskar Sengupta,
Mr. Subhasis Poddar,
Ms. Shiwani Shaw

... for the petitioners

Mr. Anirban Ray, Ld.GP,
Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

... for the State in
FMA 604 of 2024

Mr. Anirban Ray, Ld.GP,
Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

... for the State in
FMA 616 of 2024

Mr. Anirban Ray, Ld.GP,
Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

... for the State in
FMA 617 of 2024

1. All these three appeals have been filed by the

appellant challenging three orders passed in three writ petitions where the learned Single Judge declined to grant any interim order. With the consent of the learned Advocate for either side, the writ petition as well as the appeals are taken up for hearing by this common judgment and order.

2. Heard learned counsel for the respective parties elaborately.

3. The short issue which falls for consideration is whether the appellant authority namely Joint Commissioner of State Tax, Berhampore Circle had considered all the issues which have been raised by the appellant in their appeal petition. On a perusal of the order passed by the appellate authority dated 29.05.2023, we find that the only exercise done by the appellate authority is to interfere with the order passed by the Deputy Commissioner of State Tax, Krishnanagar on the ground that penalty could not have been imposed under Section 74 of the West Bengal Goods and Services Tax, 2017 (for short, the said Act) and the penalty should have been imposed under Section 73 of the Act. Since there was no allegation of any fraud, willful mis-statement or suppression. However, the Appellate Authority has not adverted to any of the other grounds which have been canvassed by the appellant/Registered Tax Payer. The appellant after disposal of the appeal, has been furnished with a declaration by the Indian Oil Corporation Limited that they have availed GTA services from the appellant for varying

periods i.e. from the year 2017-18, 2018-19 and 2019-20 and this declaration was furnished to the appellant/writ petitioner only on 4.8.2023. Therefore, the appellant could not have produced these documents before the authorities or even the appellate authority. Considering the fact that this declaration has been issued by the Indian Oil Corporation Ltd., the appellant would be entitled to take advantage of the same for as the declaration clearly mentions that the GST liability on Reverse Charge Mechanism (RCM) has been discharged by the Indian Oil Corporation Limited on the services availed from the appellant/writ petitioner. Therefore, we are of the view that the matter should go back to the original authority for re-adjudication of the matter considering the subsequent developments.

4. It is pointed out that by the learned Advocate for the appellant/writ petitioner that while issuing show-cause notice, the Assessing Officer had relied upon a decision of the Advance Ruling Authority, Goa wherein it appears that the Advance Ruling Authority at Goa held that the activity of issuance of pollution under the control certificate for the vehicle issued by the applicant therein is not covered under SAC 9991 and is covered under residue entry and hence should be taxed at 18%. Firstly, the Advance Ruling rendered in Goa cannot be made automatically applicable to the appellant/ Assessee who is registered tax payer in the State of West Bengal. Secondly, the Advance Ruling may bind the Department at Goa but

cannot bind a third party tax payer, and bind only the applicant who went before the Advance Ruling Authority for a decision. Therefore, the Original Authority while re-adjudicating the matter should not place any reliance on the Advance Ruling rendered by the Authority at Goa.

5. In the result, the appeal and the writ petition are **allowed** and the order passed by the Appellate Authority and the Original Authority/Assessing Officer are set aside and the matter stands remanded to the Assessing Officer.

6. The Appellant is directed to submit a fresh reply/representation enclosing all documents in support of their claims and submit the same to the Assessing Officer within a period of four weeks from the date of receipt of the server copy of this order. On receipt of the same the Assessing Officer shall afford an opportunity of personal hearing to the authorized appellant/Assesee and re-adjudicate the matter uninfluenced by any finding rendered by it in its earlier order nor by placing any reliance on the decision of the Advance Ruling Authority at Goa and pass a reasoned order on merits and in accordance with law.

7. Needless to say that the authority should exercise power under Section 73 of the Act and not under Section 74 of the Act as the Appellate Authority has already correct the same.

8. Consequently, connected application, if any, also stands allowed and disposed of.

(T. S. Sivagnanam)

(Chief Justice)

(Hiranmay Bhattacharyya, J.)

