

Form No. J.(2)
Item No.14

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 30.04.2024

DELIVERED ON: 30.04.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAMAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 2411 of 2023

With

IA No. CAN 1 of 2023

M/s Cosyn Limited

Vs.

Assistant Commissioner of State Tax; Bowbazar Charge & Ors.

Appearance:-

Mr. Karan Talwar

Ms. Anupa Banerjee

.....for the appellant

Mr. Anirban Ray, Ld. G.P.

Md. T. M. Siddiqui

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

.....for the State

Mr. Swaroop Orrila

.....for the State of Telengana

Mr. Rahul Dhanuka

Mr. Niraj Baheti

.....for the respondent no.2

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNAMAM, C.J.)

1. This intra-Court is directed against the order dated 4th December, 2023 in W.P.A. 25725 of 2023, by which the writ petition, which was filed by the appellant challenging an assessment order passed under the W.B.G.S.T. Act, was dismissed on the ground that it is

an appealable order. When the appeal was heard on 22nd December, 2023, the impugned assessment order in the writ petition was stayed subject to the condition that the appellant/assessee deposits 10% of the disputed tax within a time frame, which condition has been complied with.

2. Subsequently, the matter was heard at length and on 2nd April, 2024 the following order was passed:-

1. *“We have heard the learned advocates for the parties.*

2. *The State/respondents have filed their affidavit-in-opposition and the affidavit-in-reply has already been filed by the appellant.*

3. *It is pointed out by Mr. Talwar, learned advocate appearing for the appellant that the specific contention raised by the appellant ever since the show-cause notice was issued, which has explicitly been pleaded in the writ petition as well as in the appeal, has not been specifically adverted to in the affidavit-in-opposition filed by the State of West Bengal.*

4. *The case of the appellant is that it availed credit and subsequently used for payment of CGST and SGST in terms of Section 18(a) and (c) read with Rule 4 of the Goods and Services Tax Settlement of Fund Rules, 2017.*

5. *Further, it has been stated that the input tax credit, which is utilized for payment of SGST is transferred subsequently and appropriated to the respective State. Therefore, on utilization of input tax credit of IGST for payment of WBGST, tax has flown to the State of West Bengal.*

6. *We find from the affidavit-in-opposition that this averment has not been specifically dealt with.*

7. *Therefore, the learned counsel appearing for the State is directed to get specific written instructions from the appropriate authority of the department with regard to these averments/allegations made by the appellant.*

8. *Learned advocate for the appellant submitted that though notice has been served on the State of Telengana viz. the respondent no.4 in the appeal and affidavit-of-service has been filed, none of them have entered appearance on behalf of the State of Telengana.*

9. *We find that the stand taken by the State of Telengana would be very relevant for the purpose of adjudicating this appeal.*

10. *Therefore, we grant liberty to the learned advocate appearing for the appellant to serve full set of papers in this appeal petition including the affidavit-in-opposition filed by the State of West Bengal in the office of the learned Additional Advocate General for the State of Telengana so as to enable the State of Telengana to enter appearance in this proceeding.*

11. *Leave is granted to the respondent no.2 viz. the private party to file its affidavit well before the next hearing date.*

List this matter on 30th April, 2024."

3. In terms of the directions issued, the State of Telengana has been served and Mr. Swaroop Orrila, learned advocate representing the State of Telengana has entered appearance before this Court through online. The appearance of the learned advocate is noted.
4. In the order dated 2nd April, 2024 (*supra*), there was a direction issued to the learned advocate appearing for the State to get specific written instruction from the appropriate authority with regard to the averment made by the appellant that the input tax credit, which is utilized for payment of S.G.S.T., is transferred subsequently and appropriated to the respective State and on utilization of input tax credit of I.G.S.T. for payment of W.B.G.S.T. has flown to the State of West Bengal.
5. The learned Government counsel has produced the written instructions given by the Deputy Commissioner, Revenue, Bowbazar Charge dated 26th April, 2024. This written instruction has been submitted by the Deputy Commissioner upon verification of the records kept in the database after furnishing the details in a tabulated format.
6. The following observations made by the concerned authority, which is quoted hereinbelow in verbatim for better appreciation:-

"Observation upon verification as mentioned in the above table.

1. Petitioner has availed IGST ITC in February 2018 to the tune of Rs.1,50,53,298.00.

2. According to petitioner the IGST ITC to the tune of Rs.1,31,45,290.00 pertaining to the invoices 1Z11801869 AND 1Z11801870 both dated 16-02-2018 and raised by Mphasis Limited (Respondent 2) are included in it. Though no mention of the same is found in GSTR 2A (available in the server on a later date) for February 2018.

3. Petitioner did not avail any IGST ITC in March 2018 but he had IGST ITC to the tune of Rs.1,31,45,290.00 from Mphasis Limited (Respondent 2) in his GSTR 2A (available in the server on a later date) though against Invoices 1Z11801869A AND 1Z11801870A both dated 31-03-2018. The No and date of the Invoices are different with respect to the original ones upon which petitioner has claimed ITC.

4. According to petitioner he has availed ITC IGST once only in February 2018 and also that his Telengana branch has availed no IGST ITC with respect to any of the Invoices mentioned above.

5. On 29-08-2018, on 05-09-2018 and on 18-10-2018 upon uploading the returns for the months of April 2018, May 2018, and August 2018 petitioner has utilized IGST ITC to the tunes of Rs.30,98,035.00, Rs.16,86,842.00 and Rs.15,86,476.00 respectively by setting off his respective SGST liabilities.

6. So total IGST ITC to the tune of Rs.63,71,353.00 availed in 17-18 has been adjusted with SGST liability for the period 18-19.

7. As per the provisions laid down under section 18 of the IGST Act 2017 "On utilization of credit of Integrated tax availed under this Act for payment of@ state tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as Integrated Tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government....."

8. Now in compliance with the order of the Hon'ble High Court of Kolkata, upon a verification through the Information Systems Division, Directorate of Commercial Taxes, Government of West Bengal (As the proper officer does not have direct access to the relevant site) it is found that the amounts with respect to adjustment of SGST with IGST ITC mentioned in the table above, together to the

tune of Rs.63,71,353.00 have been transferred to Government of West Bengal.

Arunava Roy,
Deputy Commissioner, Revenue, Bowbazar Charge''

7. As could be seen from paragraph 8 of the above, the stand taken by the Department of Commercial Taxes, Government of West Bengal, the amount of Rs.63,71,353/- has been transferred to the Government of West Bengal.
8. In such circumstances, the assessment order, which was the subject-matter of challenge in the writ petition can no longer survive.
9. For the above reasons, the appeal is allowed, the order passed in the writ petition is set aside and the writ petition is allowed and the impugned assessment order dated 21st August, 2023 is set aside.
10. In the light of the above, the respondent/department is directed to refund the 10% pre-deposit made by the appellant pursuant to the interim order granted by this Court within eight weeks from the date of receipt of server copy of this order.
11. No 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)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)