

08.01.2024  
Item No.2  
gd

WPA/2846/2023  
KAYSONS INFRASTRUCTURE PRIVATE  
LIMITED & ANR.  
VS  
CENTRAL BOARD OF INDIRECT TAXES  
AND CUSTOMS & ORS.

Mr. Jatin Harjai,  
Mr. Abhilash Mittal  
..for the Petitioners.

Mr. Ratan Banik,  
Mr. Bishwarat Agarwal  
..for the Respondents.

The demand-cum-show cause notice dated November 3, 2023 issued under sub-section (1) of Section 73 of the CGST Act of 2017 read with Rule 142 of the CGST Rules, 2017 by the Assistant Commissioner, CGST & CX Siliguri Division is under challenge in this writ petition.

The learned senior counsel representing the petitioners invites the attention of the court to a notice issued under Section 61 of the WBGST Act by the State Tax authority alleging that certain discrepancies have been detected in the Return after scrutiny for the financial year 2018-19.

He further refers to the Audit Observation of the Superintendent of Audit, GR-L2 Siliguri Audit Circle-V, Durgapur Audit Commissionerate dated 26.02.2021 i.e. the Audit Wing of the Central Tax

authority and submits that upon verification of the documents certain discrepancies have been found including the discrepancies which were detected on scrutiny of Input Invoices, Input Tax Credit Ledgers, GSTR-3B, GSTR-9 and payment particulars for the financial year 2018-19 and the allegation was that the petitioners have availed and utilized Input Tax Credit against some invoices which were not admissible.

By referring to the Audit Report dated 16<sup>th</sup> April, 2021 of the Assistant Commissioner of Central Tax Siliguri Audit Circle-V, Durgapur Audit Commissionerate he submits that pursuant to the Audit Observation, petitioners has paid the amount demanded and it was recorded by the Audit Officer that the issue stands settled.

Mr. Jatin Harjai, learned counsel contends that after the issue including ineligible ITC availed and utilized for the financial year 2018-19 has been settled the Superintendent Range-V, CGST & CX Siliguri Division issued a notice intimating discrepancies in the Return after scrutiny for the selfsame financial year 2018-2019 and a pre-show cause notice dated 16<sup>th</sup> May, 2023 as well as the show cause notice dated 3<sup>rd</sup> November, 2023 has been issued.

The demand-cum-show cause notice dated November 3, 2023 is under challenge in this writ petition.

The learned senior counsel for the petitioners challenges the said show cause notice on the following grounds:

- (1) The show cause notice is time barred.
- (2) Proceedings by the State Tax authority as well as the Central Authority on the selfsame issue cannot be carried on simultaneously as the prior proceedings initiated at the instance of State Tax authority by issuance of an intimation under Section 61 is already pending.
- (3) When the Audit Officer upon being satisfied about the compliance made by the petitioners has already observed that the issue is settled, whether such issue can again be reopened by the Central Authority by issuing the demand notice.

Mr. Banik, learned advocate appearing for the respondent authorities submits that the State authorities have initiated the proceedings by issuing intimation under Section 61 of the WBGST Act which is yet to be concluded and, therefore, pendency of such proceedings cannot be a bar in issuing the instant show cause notice.

At this stage, Mr. Banik, learned advocate appearing for the respondent authorities prays for time to assist this court on the next occasion with regard to the issues raised by the learned senior counsel for the petitioners.

He submits that a time may be granted to the respondents to file their affidavits dealing with the aforesaid objections raised by the learned senior counsel for the petitioners.

The allegation in the demand-cum-show cause notice dated 3.11.2023 is that the tax payer have made short payment of tax as well as availed excess ITC and utilized the same for the period of 2018-19. It prima facie appears to this court that such issue has been settled as indicated in para 2 of the Audit Report dated 16-04-2021. This court is not unmindful of the well settled preposition of law that the scope of interference at the stage of show cause notice is very limited. However the grounds of challenge to the show cause notice in the case on hand, touches upon the jurisdictional issue, for which this writ petition is entertained.

Accordingly, let affidavit-in-opposition be filed within four weeks from date; reply thereto, if any, be filed within two weeks thereafter.

List this matter under the heading hearing immediately after expiry of the time fixed for exchange of affidavits.

This court is also of the considered view that unless an interim order is passed, the writ petition will become infructuous.

There shall be an order of stay of all further proceedings in connection with the show cause notice dated 3<sup>rd</sup> November, 2023 issued by the Assistant Commissioner, CGST & CX Siliguri Division, being the respondent no.4 herein, till March 15, 2024 or until further orders whichever is earlier.

Parties will be at liberty to mention the matter for inclusion after expiry of the time fixed for exchange of affidavits.

**(HIRANMAY BHATTACHARYYA, J.)**