

M/L 52
27.06.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13542 of 2024

M/s. Asian Hotels (East) Ltd. & Anr.
Versus
The Deputy Commissioner of State Tax & Ors.

Mr. Ankit Kanodia
Mr. Megha Agarwal
Mr. Piyush Khaitan
... For the petitioners

Mr. Anirban Ray,
Mr. Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
... For the State

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition has been filed, *inter alia*, challenging the order dated 30th March, 2024, passed under Section 73(9) of the West Bengal/Central Goods and Services Tax Act, 2017(hereinafter referred to as the "said Act"), whereby the respondents have purported to raise a demand on the petitioner no.1 on account of Input Tax Credit (ITC) being availed by the petitioner no.1 in violation of Section 16(2)(a) of the said Act, *inter alia*, on the ground that M/s. Crystolyte Facility Management Pvt. Ltd., with whom the petitioner no.1 had signed an agreement had closed down its business, for the financial year 2018-19.

3. When the aforesaid writ petition came up for consideration, this Court by an order dated 19th June, 2024, had permitted the petitioners to place the copy of the print out obtained from the GST portal showing status of the return filed by M/s. Crystolyte Facility Management Pvt. Ltd., by way of a supplementary affidavit.
4. Pursuant to such leave, the petitioners have filed a supplementary affidavit in Court today and have disclosed the print out from the portal of the GST authorities which was last updated on 19th June, 2024, wherefrom it would transpire that the GST status of the said M/s. Crystolyte Facility Management Pvt. Ltd is shown as *suo motu* cancelled with effect from 6th April, 2021. The same also records that returns in GSTR 3B had been filed by the said M/s. Crystolyte Facility Management Pvt. Ltd., for the tax period 2018-19. The aforesaid would *prima facie* demonstrate that M/s. Crystolyte Facility Management Pvt. Ltd., had been complying with the provisions of the said Act at least up to the tax period of 2018-19.
5. Let the supplementary affidavit filed in Court today be taken on record.
6. By placing reliance on a press release dated 4th May, 2018, issued by the Ministry of Finance, it is submitted

that it has been clarified that there shall be no automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller, however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc. It is submitted that in the instant case, it would be apparent that at the relevant point of time M/s. Crystolyte Facility Management Pvt. Ltd., had filed its return. No steps have been taken by the respondents to seek recovery of tax, if any, from the aforesaid M/s Crystolyte Facility management Pvt. Ltd. The mode and manner of recovery from the petitioner no.1 is absolutely contrary to law laid down by the Division Bench of this Court in the case of ***Suncraft Energy Private Limited & Anr. v. Assistant Commissioner, State Tax, Ballygunge Charge & Ors.***, reported in **2023 SCC OnLine Cal 2226**. In the light of the above, it cannot be considered as an exceptional situation for the respondents to proceed against the petitioner no.1 nor there is any finding to that effect.

7. Mr. Kanodia, learned advocate representing the petitioners submits that the order under Section 73(9)

of the said Act dated 30th March, 2024 is based on no evidence and is perverse, the same should be set aside. Pending hearing of this petition he prays for stay of the order impugned.

8. Mr. Chakraborty, learned advocate representing the respondents on the other hand submits that the petitioners have an efficacious alternative remedy in the form of an appeal. This Hon'ble Court, at this stage, without the petitioners exhausting their alternative remedy, should not entertain the writ petition.
9. Heard the learned advocates appearing for the respective parties and considered the materials on record. Having regard to the case made out by the petitioners I am of the view that the writ petition should be heard. Further considering the prima facie case made out by the petitioners there shall be a stay of the demand raised by the proper officer as is reflected in the order dated 30th March, 2024, subject to the petitioners' depositing 10% of the disputed tax amount with the GST authorities. Such payment must be made within a period of seven days from date.
10. If such payment is made, the interim order passed here shall continue till the end of July, 2024 or until further order whichever is earlier.

11. Let this matter appear in the Combined Monthly List of July, 2024 and be taken up for consideration on 23rd July, 2024.

(Raja Basu Chowdhury, J.)