

18.08.2023
Item No.8
gd/ssd

MAT/1236/2023
IA NO: CAN/1/2023
M/S. GOPESHWAR IRON AND STEEL WORKS
PRIVATE LIMITED AND ANR.
VS
THE SUPERINTENDENT, CGST & CX, RANGE 1,
DURGAPUR 1 DIVISION AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Mr. Shailendra Kumar Mishra
..for the Union of India.

Ms. Rajashree Venket Kundalia,
Ms. Ekta Sinha
..for the Respondents.

1. This intra court appeal is directed against the order dated 3rd July, 2023 in WPA 10506 of 2023 by which the learned Single Bench was not inclined to grant any interim order.

2. Aggrieved by the same, this appeal has been filed.

4. We have elaborately heard the learned advocate for the appellants and the learned standing counsel appearing for the respondent authority.

5. The question in the instant case would be as to whether the respondent authority can proceed further pursuant to the notice dated 17.04.2023 purported to have been issued under Section 61 of the CGST Act, 2017.

6. The appellants' case is that for the very same period the Audit Department had issued a notice dated 5th April, 2021 and called for several documents which was submitted by the appellants and after being satisfied the documents placed, the Audit Department has closed the case and has approved by proceeding dated 25.03.2022. It is further submitted that for the same period the DGGI has already issued summons and the appellants have submitted documents and the matter is pending before the DGGI. It is submitted that Section 61 of the CGST Act deals with scrutiny of returns and in terms of sub-section (3) of Section 61 in case no satisfactory explanation is being furnished by the assessee or the assessee claims to take corrective measures in his return, the appropriate officer may ensure appropriate action including those under Section 65 of the Act. This having been done and the Audit Department having approved and settled the matter by order dated 25.03.2022. The Superintendent, CGST & Central Excise, L-1, Circle-III, Durgapur will have no jurisdiction to issue the notice dated 17.04.2023 which was impugned in the writ petition. Further, the appellants' case is that another question is the jurisdiction of the DGGI to call for appearance and they have submitted their jurisdiction and supplied all the documents called for and the matter is pending. Furthermore, it is submitted that

the notice dated 17.04.2023 issued by the Superintendent, Range 1 the documents which have been called for are identical and the same settled by the department which were called for by the Audit Department which was furnished, considered and the Audit Department has been approved and settled and, therefore, it is the case for the appellants that the notice dated 17.04.2023 is without jurisdiction.

7. The learned standing counsel appearing for the respondents submitted that directions have been received from the Analytical Wing of the Department and this has necessitated the Superintendent to issue the notice dated 17.04.2023.

8. In any event the legal issue which has been required to be considered is whether a fresh notice would be issued by the Range Officer. The scrutiny of return had been done by the Audit Department and audit has been conducted which has resulted in an order under Section 65 of the Act. This being a jurisdictional issue, this court is inclined to pass the following order which will be in force till the writ petition is heard and disposed of.

9. In the result, the appeal is allowed and for the reasons stated above, the notice issued by the Superintendent, CGST & Central Excise, L-1, Circle-III, Durgapur 1 Division, Durgapur dated 17.04.2023 shall remain stayed till the disposal of the writ petition being

WPA 10506 of 2023. The respondent is directed to file the affidavit-in-opposition in the writ petition after which the writ petition will be heard and disposed of on merits and in accordance with law.

10. The learned senior standing counsel for the respondent department places reliance on the decision in the matter of M/s. Suresh Kumar PP v DGGI passed by Hon'ble Justice K Vinod Chandran and Hon'ble Justice T. R. Ravi and would submit that investigation can parallelly proceed. The applicability of the decision will be considered when the writ petition is taken up for hearing.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)