(2023) 11 KL CK 0021

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29325 Of 2023

M/s Akash Roofing — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 07-11-2023

Acts Referred:

Central Goods and Services Tax Act 2017 — Section 174(2)
Central Excise Act 1944 — Section 11A(10), 11AA, 11AC(1)(c)
Central Excise Rules 2002 — Rule 27

Citation : (2023) 11 KL CK 0021

Hon'ble Judges : Dinesh Kumar Singh, J

Bench : Single Bench

Advocate : Aswin Gopakumar; Anwin Gopakumar, Aditya Venugopalan; Nikitha Susan Paulson, Mahesh Chandran; Shallet K. Sam; Saranya Babu, Sreelal Warrier, Pradeep Kumar John

Final Decision : Dismissed

Judgement

Dinesh Kumar Singh, J

1. The petitioner, a proprietary concern under the sole ownership of Smt Sheethal K B, is engaged in the business of manufacture and sale of profile roofing sheets. The petitioner has filed this writ petition to declare the provisions of Section 174(2) of the Central Goods and Services Tax Act 2017 as ultra vires, or, in alternate, to be read down so as to make it intra vires the Constitution of India as amended by the Constitution (101st Amendment) Act 2016. The petitioner has also prayed for declaring the Ext.P3 order issued by the 4th respondent as ultra vires the Constitution of India and for quashing Ext.P1 show cause notice issued by the 3rd respondent. The petitioner has also prayed for quashing the Ext.P3 order issued by the 4th respondent whereby the demand of Rs.1,21,88,900/- has been confirmed as payable by the assessee on the value of excisable goods manufactured and cleared by the petitioner for home consumption from their factory during the period 2014-15 to 2017-18 under the

provisions of Section 11A(10) of the Central Excise Act 1944. Interest has been levied on the aforesaid demand under the provision of Section 11AA of the Central Excise Act 1944. 100% penalty of the assessed excise duty of Rs.1,21,88,900/- has been imposed on the petitioner in terms of Section 11AC(1)(c) of the Central Excise Act 1944, besides imposing a penalty of Rs.5,000/- under Rule 27 of the Central Excise Rules 2002.

2. On the basis of specific intelligence gathered by the Directorate General of Goods and Services Tax Intelligence (DGGI), (formerly known as Directorate General of Central Excise Intelligence), Kochi Zonal Unit, the investigation was initiated against the petitioner/assessee for evasion of Central Excise duty through clandestine removal of excisable manufactured goods by not taking Central Excise registration. Details were called from the petitioner for verification. The petitioner could submit only the extract of the purchase ledger and the sale ledger. The petitioner did not submit the complete details of inputs procured indigenously by import or the details of the goods cleared. The statement of the owner, Smt Sheethal K B, of the Firm was recorded on 02.08.2016 and 12.09.2018 under summons proceedings.

2.1 During the search operation on 21.05.2019, the statement of the Accountant of M/s Beena Steels, Kayamkulam, was recorded under Section 14 of the Central Excise Act. After considering the documents, material, and evidence, it was noted that the petitioner had cleared the roofing sheet manufactured by it for the period 2014-15 to 2017-18 for a total sum of Rs.19,56,54,496/-, for which show cause notice in Ext.P1 was issued for evasion of excise duty to the extent of Rs.1,23,19,965/-. The show cause notice got adjudicated, and the impugned Ext.P3 order came to be passed.

3. The petitioner had approached this Court earlier by filing W.P.(C) No.34242/2019 challenging the Ext.P1 show cause notice. However, the said writ petition came to be dismissed vide order dated 13.12.2019, which would read as follows:

“Resultantly, without prejudice to the right of the petitioner to approach the 3rd respondent with a reply to Ext.P1 show cause notice and to get the matter adjudicated before the said authority, the writ petition in its challenge against Ext.P1 show notice is dismissed.”

3.1 The petitioner has filed an appeal against the said order passed by the learned Single Judge in W.A. No.578/2020. However, no order has been passed in the said appeal, and the appeal is still pending.

4. The issue regarding the constitutional challenge to Section 174(2) of the Central Goods and Services Tax Act 2017 has attained finality by judgment dated 30.11.2022 in W.A. No.747/2019 and connected appeals, wherein the said challenge has been repelled, and the judgment passed by the learned Single Judge dismissing the Writ Petitions against which the Writ Appeals were filed was upheld.

4.2 Paragraphs 51 and 52 of the judgment dated 30.11.2022 in W.A. No.747/2019 and connected cases would read as under:

“51. The Constitutionality of Section 174(2) of the KSGST Act and legality of notices/ orders as the case may be impugned in the respective Writ Appeals are answered against the dealers, hence necessarily, the Writ Appeals must fail and accordingly are dismissed.

52. The dismissal of the Writ Appeals, it is observed, shall not be understood as denying or depriving the Dealers to avail the remedy/opportunity available against the notice/order impugned in the respective Writ Petitions, as the instance may be. Hence, we grant liberty to such of the Dealers interested in availing the remedy of reply/appeal/revision as the case may be to avail the remedy within eight weeks from today by enclosing a copy of the judgment. The authorities are directed to entertain the statutory remedy or reply as the case may be without referring to the delay occasioned during the pendency of the Writ Petitions and Writ Appeals. The authorities are further directed to consider each one of the objections raised on merits and record their views while disposing of the matter pending before them.

Writ Appeals fail. No order as to costs.”

5. Thus, considering the facts, I do not find substance so far as the constitutional challenge to the provision of Section 174(2), inasmuch as the same challenge has been repelled by the learned Single Judge and the Division Bench in the Writ Appeal, as mentioned above. Against the show cause notice in Ext.P1, the writ petition filed by the petitioner has already been dismissed. Therefore, I am of the considered view that there is no substance in the writ petition to say that the impugned Ext.P3 order is ultra vires the Constitution and the writ petition is thus dismissed. If the petitioner is aggrieved by the impugned Ext.P3 order, he may take recourse to the statutory remedy, if any, available to him under the law. However, this Court cannot adjudicate the merit of the order in Ext.P3 in the present writ petition.

The writ petition stands dismissed. No order as to costs.

