(2021) 06 GAU CK 0053

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3002 Of 2021

M/S Ozone Ayurvedics APPELLANT

Vs

Union Of India And 3 Ors RESPONDENT

Date of Decision : 08-06-2021

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2021) 06 GAU CK 0053

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : M L Gope

Judgement

1. The Court proceedings have been conducted through video-conference.

2. Heard Ms. N. Hawelia, learned counsel for the petitioner.

3. Issue notice, returnable within three weeks.

4. Mr. S.C. Keyal, learned Standing Counsel, GST accepts notice on behalf of all the respondents.

5. As the respondents are duly represented, no formal steps for notice need to be taken in respect of the respondents. However, the petitioner shall

serve extra copies to the learned Standing Counsel, GST.

6. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, who is a manufacturing unit, has challenged the validity of the

impugned notice dated 26.03.2021 raising a demand for refund of Rs.12,65,834/- purported to be 50% of the amount of the GST which was refunded

earlier to the petitioner along with interest. The petitioner is also aggrieved that the petitionerâ??s request for fixing the special rate as contemplated under the rules has not been considered by the Revenue Authority before issuing the aforesaid demand notice. The petitioner has further prayed for

restraining the respondents from taking any steps/action pursuant to the said notice.

7. The learned counsel for the petitioner has referred to order dated 30.03.2021 passed by a Coordinate Bench of this Court in WP(C) No. 1969/2021

and it is submitted that this Court deemed it appropriate that the Commissioner of CGST, Dibrugarh would consider the application of the petitioner

therein claiming for fixation of the special rate and it was provided that till such decision was taken, no coercive measures be taken against the

petitioner pursuant to the communication impugned therein.

The relevant portion of the aforesaid order dated 30.03.2021 passed in WP(C) No. 1969/2021reads as follows,

â??8. Pending further order, the Court is inclined to follow the two orders dated 24.03.2021 passed by this Court in WP(C) 1644/2021 and

WP(C) 2089/2021 and as an ad interim measure it is provided that the Commissioner of CGST, Dibrugarh (respondent no.2) shall dispose

of the application dated 28.09.2020 submitted by the petitioner, received in the office of the Commissioner on 30.09.2020, for fixation of

special rate within a period of 4(four) weeks from the date of receipt of the certified copy of the order. It is provided that till such decision

is taken, no coercive measure be taken against the petitioner pursuant to the demand notice dated 28.05.2020 and 08.01.2021 impugned in

this writ petition.â??

8. The learned counsel for the petitioner has prayed for a similar order to the effect that no coercive action be taken by the respondent authorities

pursuant to the impugned communication that 26.03.2021.

9. Mr. Keyal, learned Standing Counsel, GST acknowledges passing of such an order by this Court in the aforesaid WP(C) No.1969/2021.

10. However, Mr. Keyal, learned Standing Counsel, GST has submitted that the notice of demand which is impugned in the present petition is merely

in the nature of show-cause notice and, as such, he has raised an issue of maintainability of the present petition. Accordingly, the issue of

maintainability is kept open.

11. Mr. Keyal, learned Standing Counsel, GST, submits that the demand notice

relating to the prayer of the petitioner to fix a special rate, is being

examined by the authorities which is likely to be concluded within a period of four weeks and, as such, the authorities will not take any coercive action

against the petitioner in terms of the aforesaid demand notice till such consideration by the Revenue Authorities.

12. In that view of the matter, pending further order, this Court is inclined to pass a similar order as passed on 30.03.2021 in WP(C) No. 1969/2021

and accordingly, the Revenue Authorities are directed not to act upon the aforesaid demand notice dated 26.03.2021 till a decision is taken by the

respondent authorities regarding fixation of special rate.

13. List after three weeks.

