

05.05.2022.  
p.b.  
Sl. No.21.

W.P.A. 7231 of 2022  
With  
W.P.A. 7232 of 2022

Sanchita Kundu & Anr.

Vs.

The Assistant Commissioner of  
State Tax, Bureau of Investigation,  
South Bengal & Ors.

Mr. Jaweid Ahmed Khan,  
Mr. Bhaskar Sengupta,  
Mr. T. Ahmed Khan.

.....for the petitioner.

Mr. Amit Kr. Chaturvedi.

.....for the UOI,

Mr. A. Ray,  
Mr. S. Mukherjee,  
Mr. T. M. Siddiqui,  
Mr. D. Ghosh,

.....for the State.

Heard learned advocates appearing for the parties.

These writ petitions have been filed by the petitioners being aggrieved by the action of the respondent GST concerned denying the benefit of Input Tax Credit (ITC) by their impugned order dated 27<sup>th</sup> December, 2021 to the petitioner on purchase of the goods in question from the suppliers and asking the petitioners to pay the penalty and interest under the relevant provisions of GST Act, on the ground that the registration of the suppliers in question has already been cancelled with retrospective effect covering the transaction period in question. Petitioner has also challenged the impugned orders dated

29<sup>th</sup> March, 2022 and 30<sup>th</sup> March, 2022 respectively being Annexure P-10 to the writ petition, under Section 79(1)(c) of the WBGST Act.

The main contention of the petitioners in these writ petitions are that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so, when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction, petitioners could not be faulted if the suppliers appeared to be fake later on. Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned

finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question. Petitioners further submit that all the purchasers in question invoices-wise were available on the GST portal in form GSTR-2A which are matters of record.

Considering the facts as recorded, without any further verification it cannot be said that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering into the transactions in question and that there was no verification of the genuineness of the suppliers in question by the petitioner during the relevant period.

Petitioners in support of their contention have relied on unreported judgment of this Court dated 13<sup>th</sup> December, 2021 in a similar case in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors. in W.P.A No.23512 of 2019.

Considering the submission of the parties and on perusal of records available, these writ petitions are disposed of by setting aside the aforesaid impugned orders and remanding these cases of the petitioners to the respondents officer concerned to consider afresh on the

issue of their entitlement of benefit of input tax credit in question by considering the documents which the petitioners intend to rely in support of their claim of genuineness of the transactions in question and the respondent concerned shall also consider as to whether payments on purchase in question along with GST were actually paid or not to the suppliers (RTP) and also to consider as to whether the transactions and purchases were made before or after the cancellation of registration of the suppliers and also to consider as to compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

If it is found upon verification and considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration as to whether facts of the petitioners are similar to the judgements of the Supreme Court and various High Courts and of this Court upon which petitioners intend to rely and if it is found similar to the present case in that event the petitioners shall be given the benefit of input tax credit in question.

These cases of the petitioner shall be disposed of by the respondents concerned in accordance with and in the light of observation made above and by passing a reasoned

and speaking order after giving effective opportunity of hearing to the petitioners, within eight weeks from the date of communication of this order.

These Writ Petitions being WPA No.7231 of 2022 and WPA No.7232 of 2022 are disposed of in the light of observation and directions as made above.

In view of setting aside the impugned adjudication orders, impugned orders being Annexure P-10 also stands set aside.

**(Md. Nizamuddin, J.)**