

Item No.4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 21.04.2023

DELIVERED ON: 21.04.2023

CORAM:

THE HON'BLE ACTING CHIEF JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 630 of 2023

With

I.A. No. CAN 1 of 2023

Anmol Industries Limited & Anr.

Vs.

**The West Bengal Authority for Advance Ruling,
Goods and Services Tax & Ors.**

Appearance:-

Mr. Ankit Kanodia

Ms. Megha Agarwal

Mr. Abhijat Das

..... for the appellants

Mr. T. M. Siddique

Mr. Debashis Ghosh

Mr. Varun Kothari

.....for the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, ACJ.)

1. This intra-Court appeal filed by the writ petitioners is directed against the order dated 5th April, 2023 in W.P.A. 6251 of 2023. The appellants filed the writ petition challenging an order passed by the West Bengal Authority for Advance Ruling, Goods and Services Tax (for short, "AAR") dated 9th February, 2023, by which the application filed by the appellants for an advance ruling was rejected on the ground the appellants have no *locus standi* to file such an application. The learned Single Bench by the impugned order has relegated the appellants to the appellate authority under the Act to agitate the correctness of the order passed by the AAR. Aggrieved by such order, the appellants have preferred the present appeal.

2. We have heard Mr. Ankit Kanodia, learned advocate for the appellants and Mr. T. M. Siddique, learned Government counsel representing the State.

3. The AAR in the order impugned in the writ petition has made a slight attempt to go into the aspect as to who is the applicant before the AAR seeking an advance ruling and concluded that the appellants being recipients of service is not entitled to maintain an application before the AAR. Under the provisions of the Central Goods and Services Tax Act, 2017, (for brevity, "the Act"), in Section 95(c) the term

"applicant" has been defined to mean any person registered or desirous of obtaining registration under the Act. Thus, in our view, the said term has been defined in the most widest possible manner to include any person registered or desirous of obtaining a registration under the Act. Undoubtedly, the appellants are registered under the provisions of the Act. Section 97 of the Act deals with application for advance ruling. Sub-Section (1) states that an applicant desirous of obtaining an advance ruling under the relevant chapter may make an application in such form and manner accompanied by such fees, as may be prescribed, stating the question on which the ruling is sought. Sub-Section (2) deals with the question on which advance ruling can be sought for under the Act. The application filed by the appellants would fall under clause (b), Section 97(2) as the appellants seek for a ruling as regards applicability of an exemption notification no.12/2017-CGST (Rate) dated 28th June, 2017.

4. If that be the case, it will be well within the jurisdiction of the AAR to consider the application on merits rather than rejecting the same on the ground of lack of locus standi.

5. As pointed out, the appellants clearly fall within the definition of "applicant" as defined under Section 95(c) of

the Act, therefore, we are of the view that the application filed by the appellants before the AAR has to be decided on merits.

6. In the case of ***M/s. Gayatri Projects Limited & anr. Vs. The Assistant Commissioner of State Tax, Durgapur Charge & Ors.*** in ***M.A.T. No.2027 of 2022*** dated 5th January, 2023, this Court had taken note of Section 95(c) and held that the Act defines "applicant" to mean any person registered or desirous of obtaining registration under the Act and in the said case, the appellants being registered dealers under the provisions of the Act would fall within the definition of "applicant" as defined under Section 95(c) of the Act, though the appellants therein were not parties to the proceedings before the AAR.

7. For the above reasons, the appeal is allowed along with the connected application and the order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order passed by the AAR dated 9th February, 2023 is set aside and the matter is remanded back to the West Bengal Authority for Advance Ruling to decide the application on merits and in accordance with law.

8. We make it clear that this direction has been issued considering the facts and circumstances of the case on hand.

9. There shall be no order as to costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

I agree,

(HIRANMAY BHATTACHARYYA, J.)

PALLAB/KS (AR.C)