

HIGH COURT OF SIKKIM
Record of proceedings

W.P. (C) No. 54 of 2023

M/S SICPA INDIA PRIVATE LIMITED & ANR. PETITIONERS

VERSUS

UNION OF INDIA & ORS. RESPONDENTS

Date: 05.12.2023

CORAM

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Petitioners : Mr. Ankit Kanodia, Advocate (*through VC*).
Ms. Megha Agarwal, Advocate (*through VC*).
Ms. Rachhitta Rai, Advocate.

For Respondents: Ms. Sangita Pradhan, Deputy Solicitor
General of India assisted by Ms. Natasha
Pradhan and Ms. Purnima Subba,
Advocates.

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1. Heard learned Counsel for the Petitioners.
2. The impugned Order is an appealable Order under Section 112 of the Central Goods and Services Tax Act, 2017 (CGST). The only argument sought to be made out by the learned Counsel for the Petitioners is that because of non-constitution of the Tribunal, he is without a remedy.
3. However, the same issue has been taken care of by the CGST (*Ninth Removal of Difficulties*) Orders, 2019 as reproduced under:-

“2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-

(a) the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the “six months from the date on which the said order has been passed” in sub-section (3) of section 112,

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the start of the six months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.”

4. Mr. Kanodia submits that three other High Courts *viz.*, Patna High Court, Orissa High Court and Bombay High Court have taken the view that in spite of the provisions of the CGST (*Ninth Removal of Difficulties*) Orders, 2019, a Writ is maintainable.

5. This Court has perused the compilation filed by learned Counsel for the Petitioners. None of the High Courts therein have held that a Writ Petition is maintainable in spite of an alternative remedy being available. By the present Writ Petition, admittedly, the Petitioners are seeking refund of unutilized Input Tax Credit amounting to Rs.4,37,61,402/- in terms of Section 49 (6) of the CGST Act, 2017. As and when the Appellate Tribunal is constituted, if the Petitioners are successful in satisfying the Appellate Tribunal, the refund would be granted and no prejudice would be caused to them if they await the constitution of the Appellate Tribunal.

6. The Writ Petition is disposed of accordingly permitting the Petitioners to approach the statutory Tribunal, once constituted.

Judge