

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.295 of 2024

Shri Asok Roy

.....Petitioner(s);

Versus

Commissioner (Appeal), CGST & another

.....Respondent(s).

For Petitioner(s) : Mr. Vinay Shraff, Advocate,
Ms. Priya Sarah Paul, Advocate.

For Respondent(s) : Mr. Paramartha Datta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

24/04/2024

The order in original dated 10.10.2022 [Annexure-N] imposing service tax liability with interest and penalty and also penalty for non-filing returns have been imposed under Sections 73(1) of the Finance Act, 1994 read with Section 75, 77 & 78 thereof by the Joint Commissioner, Central GST and Central Excise, Agartala- respondent No.2. The appeal preferred under Section 85 of the Finance Act, 1994 has also been dismissed on grounds of delay and failure to make pre-deposit.

2. The petitioner has approached this Court under Article 226 of the Constitution of India. Mr. Vinay Shraff, learned counsel for the petitioner, has *inter alia* raised the following grounds to press the challenge before this Court in writ jurisdiction:

(i) that the show cause notice under Section 73(1) proviso to the Finance Act, 1994 was beyond the period of five years from the relevant date reckoned from the date of filing of the half yearly return for the financial year

2016-17. Therefore, the proceeding, so far as the first half of the financial year 2016-2017 is concerned, is without jurisdiction.

(ii) The writ petitioner was registered as a contractor under the service tax. However in respect of the contracts relating to construction of bridge and road, petitioner was exempted under the mega exemption notification No.25/2012 dated 20.06.2012. The investigation leading to the issuance of show cause notice on 13.04.2022 [Annexure-G] for the financial year 2016-2017 was not proper in the eye of law.

(iii) Since the demand of service tax dues were above fifty lakhs, the department was required to have a pre-consultation in terms of the Master Circular dated 10.03.2017, which was not done.

3. Learned counsel for the petitioner submits that moreover the investigation was not directed as against the service recipients to substantiate the plea taken by the writ petitioner that no service tax were levied or paid in respect of the execution of bridge and road construction work. The department seems to have relied upon the 26AS statement received from the CBDT database to initiate an investigation and proceed against the petitioner. The investigation though involved two preceding financial years, but the SCN was limited to the financial year 2016-2017. Therefore, the learned adjudicating authority did not appreciate the reply of the petitioner in proper perspective and imposed the service tax liability along with interest and penalty. The appellate authority also dismissed the appeal only on the grounds of delay and failure to make pre-deposit. Since the issue of jurisdiction goes to the root of the matter, therefore, the writ petition is maintainable.

4. Mr. Paramartha Datta, learned counsel for the respondents-revenue, has objected to the maintainability of the writ petition in the presence of the statutory appeal before the learned CESTAT in terms of Section 86 of the Finance Act, 1994. He submits that the grounds raised by the writ petitioner involved mixed question of fact and law which can be properly appreciated by the second appellate authority i.e. the learned CESTAT. As such, petitioner may be relegated to pursue his remedy before the learned CESTAT.

5. We have considered the submission of learned counsel for the parties. Since the petitioner has a statutory remedy of appeal under Section 86 of the Finance Act, 1994 and that he has already subjected himself to the jurisdiction of two statutory forums before the adjudicating officer and the appellate authority and that certain grounds raised by the petitioner also involve scrutiny on factual issues, we deem it proper to relegate the petitioner to invoke the appellate remedy before the learned CESTAT in terms of Section 86 of the Act. Petitioner is at liberty to raise all grounds of fact and law before the learned CESTAT and undertake necessary compliance for filing such an appeal. If such appeal is preferred within a period of 2(two) weeks from today, learned CESTAT would consider the issue of limitation empathetically since the petitioner was pursuing his remedy before the Writ Court. Needless to say, if such an appeal is filed, the learned CESTAT would consider the same in accordance with law.

6. Pending application(s), if any, shall stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Pijush/