

GAHC010061232024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1948/2024

ASOK ROY
S/O- LATE AMRITA KUMAR ROY, HAVING HIS PLACE OF BUSINESS AT
TAMSABARI, SONAMUREA, SEPAHIJALA, TRIPURA-799181.

VERSUS

THE COMMISSIONER (APPEALS) AND ANR
CGST, CENTRAL EXCISE AND CUSTOMS, 3RD FLOOR, GST BHAWAN,
KEDAR ROAD, MACHKHOWA, GUWAHATI-781001

2:THE JOINT COMMISSIONER
CENTRAL GOODS AND SERVICES TAX
3RD FLOOR
JACKSON GATE BUILDING
AGARTALA-799001

Advocate for the Petitioner : MR. VINAY SHRAFF

Advocate for the Respondent : SC, CGST

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

08.04.2024

Heard Shri V. Saraf, learned counsel for the petitioner, who has put to
challenge an Order-in-Appeal bearing no. 717/GHY(A)/COM/ST/AGT/2023

dated 20.12.2023 passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati as well as the Order-in-Original bearing no. 11/ST/JC(HQ)/2022 dated 10.10.2022 passed by the Joint Commissioner, CGST, Agartala.

By the Order-in-Original, a demand for an amount of Rs.47,24,701/- (Rupees Forty Seven Lakh Twenty Four Thousand Seven Hundred and One only) has been raised on account of Service Tax, Swachh Bharat Cess and Krishi Kalyan Cess along with interest and penalty for the Financial Year 2016-17. It is contended that the endeavour of the petitioner to get his grievance redressed in the appellate stage being unsuccessful, the instant petition has been filed.

Shri S.C. Keyal, the learned Senior Standing Counsel, CGST has however raised a preliminary objection on the ground that the Order-in-Original has been passed by the Jurisdictional Commissioner of Tripura at Agartala. So far as the Appellate Authority is concerned, he has submitted that the appeal has not been decided on merits and rather has been decided on the grounds of limitation as well as non-deposit of the statutory amount and the said reasons cannot be matters of challenge.

This Court has considered the aforesaid aspects.

It transpires that the time prescribed for preferring an appeal is 60 days which is extended by a further period of 30 days and there is no specific provision for condonation of delay. The other aspect, as indicated is non-deposit of statutory amount. The aforesaid aspects cannot be termed to be a decision which touches the merits of the case filed by the aggrieved petitioner.

Under such circumstances, assuming jurisdiction by this Court only because there is an involvement of an appellate authority in Guwahati may not

be proper.

At this stage, Shri Saraf, the learned counsel for the petitioner submits that he may be allowed to withdraw this petition and file it before the appropriate High Court.

In view of the aforesaid submission, the petition is allowed to be withdrawn with liberty to approach the appropriate forum. It is however made clear that no observation touching upon the merits has been made by this Court while dismissing the present writ petition.

JUDGE

Comparing Assistant