Court No. 2

30.09.2021

(Supl. 2)

(S. Banerjee/BP)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA 1566 of 2021

R. M. Sarkar Company Private Limited & Anr.
Vs.
The State of West Bengal & Ors.

(Via Video Conference)

Mr. Saikat Biswas
Mr. Samiran Ghosh
..for the petitioners

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman
... for the State

Let the affidavit of service filed in court today be kept on record.

The petitioners are aggrieved by an order of attachment of his bank account issued by the Deputy Commissioner of State Tax (GST), Jalpaiguri Charge, being the respondent no. 4 herein, in execution of order of demand for GST. The demand arose pursuant to a finding against the petitioners as regards suppression on annual turnover for two consecutive years.

The petitioners were issued show-cause by the first authority. They did not appear and the demand was confirmed.

Counsel for the petitioners submits that an objection in writing was given before the first authority. The petitioners preferred an appeal before the appellate authority and it is submitted that the appeal was summarily dismissed on three grounds, namely:

i) Delay in submission of appeal;

ii) Non-receipt of certified copy and

iii) Non-receipt of proof of payment of 10 per cent. at disputed tax.

Counsel for the petitioners submits that the petitioners had put in 10 per cent. of the amount claimed along with their appeal and there is no provision for filing certified copies of the order of the authority below since everything is online. It is also submitted that the delay in submission of the appeal ought to have been condoned.

It appears from the records that there was a delay of 178 days in preferring the appeal and the grounds offered therefor is paucity of fund.

It is, therefore, submitted that the appellate authority acted in haste and did not give any reason for rejection of such appeal.

Counsel for the State submits that there is a detailed order passed on 3rd March, 2020 by the Senior Joint Commissioner, Commercial Tax, Siliguri as to the reasons why the appeal was dismissed.

This court, therefore, finds that the procedure prescribed by law under Section 107 of the GST Act has been followed by the appellate authority. A writ court only goes into the decision making process and not the decision itself. Insofar as the delay of 178 days in preferring the appeal, it is now well-settled, that the statutory period fixed for preferring appeals are generally not condoned unless there is a specific provision in the statute applying the provisions of the Limitation Act, particularly Section 5 thereof.

In that view of the matter, no interference is called for with the impugned order and the writ application is dismissed without, however, any order as to costs.

(Rajasekhar Mantha, J.)