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WPO No. 286 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. WEBSOL ENERGY SYSTEM LIMITED
Versus
UNION OF INDIA & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 9th August, 2021

(Via Video Conference)

Mr. Aditya Dutta, Adv.
Mr. Akash Dutta, Adv.
... for Petitioner

Mr. Siddhartha Lahiri, Adv.
Ms. Sumitra Das, Adv.
... for Respondent no.1

The Court : In this matter the petitioner has challenged the impugned order dated 16th December, 2009, passed by the Commissioner of Central Excise (Appeal), which was an appellable order. Though the learned Counsel appearing for the petitioner submits that challenging the said impugned order without approaching the statutory appellate authority he filed the writ petition being WPO No.57 of 2012, which was again dismissed sometimes in 2019, but the petitioner did not take any steps for hearing and disposal of the said writ

petition, though it was restored on 2019. The petitioner without disclosing this fact that the subject matter of the said writ petition was impugned order dated 16th December, 2009, mentioned before me for withdrawal of the same and to file a fresh writ petition. Had this fact been known to this Court, that is, the impugned order is of 2009 and there was availability of alternative remedy by way of statutory appeal, this Court would not have granted him liberty to withdraw and file a fresh writ petition. The instant writ petition has been filed solely relying on my order dated 12th July, 2021 that I have given the petitioner liberty to withdraw and file the fresh writ petition. But this liberty cannot ignore the negligence and delay on the part of the petitioner in pursuing the matter for early hearing and disposal of the same and also the fact that alternative remedy was available to him by way of statutory appeal.

It is also the case of the petitioner that in 2009 he had filed another writ petition being WP No. 1228 of 2009 challenging the impugned order dated 12th October, 2009 from the same cause of action and the said writ petition was disposed of by directing the respondent authority to consider the said application of the petitioner by giving opportunity of hearing to it and after that the impugned order dated 16th December, 2009 was passed which, according to the petitioner, was not in strict compliance of the order of this Court dated 14th December, 2009, that is, according to him, without opportunity of hearing the said order was passed. If that was the case then the petitioner should have approached the Court whose order was not complied with by the authority in an appropriate proceedings, but instead of doing so

the petitioner filed another writ petition being WPO No.57 of 2012 and on 12th July, 2021 has withdrawn the said writ petition by not revealing all these facts and got the liberty to file fresh writ petition.

Considering these facts I am not inclined to entertain this writ petition and accordingly this writ petition being WPO No. 286 of 2021 is dismissed.

However, dismissal of this writ petition will not prevent the petitioner to avail the remedy if available to it under any law challenging the said impugned order.

(MD. NIZAMUDDIN, J.)