

21-03-2022
Item No.33
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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.4378 of 2022
Sanjay Kumar Dhelia
-vs-
Union of India & Ors.

Mr. Sutirtha Das ...for the petitioner

Mr. Y.J. Dastoor, Ld. ASG,
Mr. Siddhartha Lahiri ...for the UOI.

Mr. Vipul Kundalia
... For the Respondent Nos.3 & 4.

None appears on behalf of the respondent/CGST Authority in spite of service of notice and the copy the writ petition. Mr. Kundalia, learned Advocate who usually appears on behalf of the CGST Authority is engaged by this court in this matter to represent the CGST Authority.

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order dated February 7, 2022 passed by the respondent-GST authority rejecting the claim for refund to the petitioner on the grounds of limitation.

Learned advocate for the petitioner submits that the impugned order of rejection is bad in law. In support of his contention, he has relied upon an unreported decision of the Bombay High Court dated January 10, 2022 passed in Writ Petition (L) No.1275 of 2021 (Saiher Supply Chain Consulting Pvt. Ltd.-vs-The Union of India & Anr.) and also an unreported decision of the Madras High Court dated September 28, 2021 passed in WP No.18165 of 2021 & WMP Nos. 19386 & 19389 of 2021 (M/s. GNC Infra LLP-vs-Assistant Commissioner (Circle) Ekkatuthangal, Commercial Tax Department).

Mr Dastoor, learned ASG appearing for the Union of India, who was asked to consider the aforesaid unreported decisions, very fairly submits that in the facts of the present case the aforesaid decisions are covered in favour of the petitioner, and that the matter should be remanded back to the officer concerned to consider afresh and pass an order on merits.

Considering the submission of the parties, this writ petition being WPA No.4378 of 2022 is disposed of by setting aside the impugned order dated February 7, 2022 with a direction upon the respondent concerned to consider the petitioner's application in question afresh on merits, and pass a reasoned and speaking order in accordance with law instead of on the point of limitation, within eight weeks from the date of communication of this order.

[Md. Nizamuddin, J]

