27.06.2022
Sl no. 9
Ct no. 2
P.M.

WPA 10314 OF 2022

Janhabi Jiban Biswas.
- Vs
Joint Commissioner of Central Tax, CGST & CX, Kolkata North Commissionerate & Ors.

Mr. Shiv Shankar Banerjee
... for the petitioner

Mr. Rameshwar Sinha
... for Union of India

Mr. Kaushik Dey,
Mr. Sukalpa Seal
... for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition, the petitioner has challenged the impugned adjudication order in original dated 23rd December, 2021 being annexure P/2 at page 45 of the writ petition, passed by the Joint Commissioner, North CGST & CX, Kolkata. It appears from record annexed to the writ petition that before passing the aforesaid impugned order the show-cause cum demand notice was issued on 8th April, 2019 being annexure P/1 to the writ petition. It is also matters of record that the impugned order was passed by giving opportunity of personal hearing to the petitioner and after considering the detailed written submission filed by the petitioner at the time of hearing on 30th November, 2021 which appears at page 58 being annexure P/3 to the writ petition.

It appears from record that the impugned show-cause notice was issued in contravention of provisions of section 66B, 68, 70 of Finance Act, 1994 while it is the case of the petitioner that the said provisions are not applicable to the nature of transaction involved and in view of Special Economic Zone (SEZ) area under Section 26(1)(e) and Section 51 of the Special Economic Zone Act, 2005 and Rule 22 of Special Economic Zone. The impugned adjudication order is appellable under the relevant provisions of the statute.

I find that this is not a case where the authority has committed violation of principle of nature justice, the impugned order has been passed after providing effective opportunity of hearing as well as after considering the written submission of the petitioner.

On perusal of the impugned order dated 23rd December, 2021, I find that the respondent authority concerned has given a detailed reason and discussed the contentions raised by the petitioner in its written submission though petitioner submits that the impugned order is perverse.

It is an admitted position that petitioner has participated in the impugned proceeding after receiving the show cause notice, attended the personal hearing by submitting written notes of arguments and the adjudicating authority passed the impugned order after giving elaborate reasons and discussion in its impugned order and further that against the impugned order, the petitioner has already filed statutory appeal and now petitioner argues that even if he has filed appeal and even if there are two parallel proceedings one by way of appeal and another by way of writ proceeding, since it has not made pre-deposit which seems to be deliberately and taking the plea that the appeal in question which has been filed by it is not proper and regular, the writ Court should ignore the same and entertain this writ petition. I am not convinced with such submission of the petitioner.

I am not inclined to entertain this writ petition. However, on the prayer of the learned advocate appearing for the petitioner I am extending the time to make pre-deposit in connection with the appeal in question, within a period of four weeks from date and if such pre-deposit is made by the petitioner the officer concerned shall not take any coercive action for recovery of the demand in question. In case of default in making such pre-deposit within the time stipulated herein, this order of extension of time to make pre-deposit will have no force.

The appellate authority shall expeditiously proceed with the appeal in accordance with law after compliance of pre-deposit if made within time stipulated herein.

With this observation and direction this writ petition being WPA 10314 of 2022 stands disposed of.

(Md. Nizamuddin, J.)