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WPA 7453 of 2023

Liakhat Ali Mallick

Vs

The State of West Bengal & Ors.

Mr. Avra Mazumder,
Mr. Suman Bhowmik,
Mr. Samrat Das

... For the Petitioner.

Mr. A. Ray, Ld. GP.,
Mr. T.M. Siddiqui,
Mr. S. Mukherjee,
Mr. V. Kothari

... For the State.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned garnishee notice dated 13th February, 2023, as appears at page 63 of the writ petition as a step for recovery of the interest demand arising out of the adjudication order in original against which according to the petitioner he has filed the appeal and paid the part of the interest and the interest due is Rs.24,74,434/-. The main ground of challenge of the impugned garnishee order, by Mr. Mazumder, learned Advocate appearing for the petitioner is that before the expiry of three months of filing the appeal such harsh steps for recovery of interest has been taken under Section 78 of the WBGST Act, 2017.

Mr. Siddiqui, learned Additional Government Pleader in opposing the writ petition defends and justifies the action of the respondent concerned

initiating the impugned recovery proceeding by contending that there is no complete bar for taking steps for recovery before the expiry of statutory period of 90 days of filing the appeal against the order in original as per proviso to Section 78 of the aforesaid Act and he has placed the copy of the order sheets containing the reasons for taking recourse to proviso to Section 78 of the aforesaid Act and on perusal of the same I find that department has recorded some reasons for taking recourse to proviso 78 of the Act.

Mr. Mazumder, learned Advocate appearing for the petitioner submits that before forming opinion or reasons for taking recourse to proviso Section 78 of the aforesaid Act, the Adjudicating Authority had already taken steps for recovery, which is not fully correct since the impugned garnishee order has been issued on the very same date i.e. on 13th February, 2023, when the reasons for recovery by taking recourse to proviso Section 78 of the aforesaid Act has been recorded.

Without going into the merits and legality of the recorded reasons for taking recourse to proviso to Section 78 of the Act during the pendency of the appeal, I am inclined to stay the impugned garnishee order, if the petitioner pays 20% of the interest due amounting to Rs. 24,74,434/- within seven days from

date and further the Appellate Authority concerned is directed to dispose of the appeal in question expeditiously and preferably within six weeks from the date of communication of this order and further recovery of the due in question will depend upon the final outcome of the appeal and in the mode and manner as prescribed under the law.

With this observation and direction this writ petition being WPA 7453 of 2023 is disposed of.

(Md. Nizamuddin, J.)