28.04.2023
Item No.9
gd/ssd

MAT/705/2023
IA NO: CAN/1/2023
HALDIA NIRMAN PROJECTS PRIVATE LIMITED AND ANOTHER
VS
THE ADDITIONAL DIRECTOR GENERAL, DIRECTORATE GENERAL OF GOODS AND SERVICES TAX INTELLIGENCE, KOLKATA ZONAL UNIT AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Mr. Bhaskar Prosad Banerjee,
Mr. Tapan Bhanja
..for the Respondent No.1.

Mr. Shiv Shankar Banerjee,
Ms. Manasi Mukherjee
..for the Respondent No.2.

Mr. Kaushik Dey,
Mr. Goutam Sardar
..for the Respondent No.4.

1. This intra court appeal by the writ petitioners is directed against the order dated 13.04.2023 passed by the learned Single Bench in WPA 7386 of 2023 dismissing the writ petition on the ground of that the order impugned in the writ petition was speaking order.

2. What was challenged before the learned Writ Court is an order in original dated 7th February, 2023 passed by the Commissioner of Central Tax CGST & CX, Haldia Commissionerate. Admittedly, the order impugned in the writ petition was an

appealable order under Section 35B of the Central Excise Act, 1944 read with Section 174(2) of the CGST Act, 2017 and such appeal would lie before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi.

3. The learned advocate for the appellants would vehemently contend that the preliminary objection raised by the appellants in the reply to the show cause notice with regard to invocation of the extended period of limitation has not been dealt with by the adjudicating authority and in this regard the learned advocate elaborately referred to the submissions made by the assessee before the adjudicating authority to demonstrate that the adjudicating authority though has extracted the submissions in its entirety along with the decisions which were relied upon no finding has been recorded as to the correctness of invoking the extended period of limitation. To strengthen the said submission, Paragraph 4.8 of the adjudication order dated 7th February, 2023 was referred to. It is further submitted that all other factual details were fully explained and if the department has to resort to detail manual scrutiny of the service tax returns, it is required to follow the directions issued by the Board in Circular No.185/4/2015-S.T. dated 30.06.2015 more particularly Para 5.2 of the said Circular which

has not been followed by the department. Apart from that various other issues were also pointed out with regard to the allegation in the show cause notice and as to what is the nature of reply given by the assessee etc. Our attention has also drawn to the communication sent by the Superintendent CGST & CX dated 17.08.2018.

4. We have heard the submissions of the senior Standing Counsel for the respondents.

5. Admittedly, the grounds which have been canvassed before us in this appeal as well as in the writ petition are not pure questions of law. But mixed questions of fact and law. Whether the reasoning given by the adjudicating authority while considering the issue relating to invoking extended period of limitation is sufficient or not in the facts and circumstances cannot be adjudicated by way of affidavits in a writ petition. Apart from that the power given to the tribunal under Section 35B of the Act is wide enough to re-examine the factual position and the tribunal being the last fact finding committee can call for records, examine all details and take a decision in the matter. Therefore, we are of the view that when such an effective and efficacious alternative remedy is available under the Act the appellant should not be allowed to bypass such remedy more particularly on the grounds which

have been canvassed in the writ petition. Therefore, we are of the view that the appellant should avail the alternate remedy under the Act.

6. Accordingly, the appeal is dismissed giving liberty to the appellant to challenge the order dated 7th February, 2023 before the learned tribunal. The period during which the writ petition was filed and till the receipt of the server copy of this order shall be excluded for the purpose of computing limitation while filing the appeal. If the appellant chooses to avail such appellate remedy, then the learned tribunal shall grant 15 days more time from the date of date of receipt of the server copy of this order while computing limitation.

7. With the above observation, the appeal is dismissed.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)