WPA 13940 OF 2023

27.06.2023
Sl no. 18
Ct no. 2
P.M.

Keshab Sharma
- Vs -
Superintendent (Adjn) CGST & CX; Barrackpore Division, Kolkata North Commissionerate, having office at 3rd Floor, Reliance Trends Building, 18/2, Ghosh Para Road, Barrackpore, North 24 Parganas, West Bengal, Pin - 700120 & Ors.

Ms. Rita Mukerjee,
Mr. Abhijat Das,
Mr. Asish Bhattacharya
… for the petitioner

Mr. Bhaskar Prosad Banerjee,
Ms. Ekta Sinha
… for the respondent CGST & CX.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned show-cause notice dated 26th April, 2022 under the Service Tax Act, by filing this writ petition on 13th June, 2023 that is almost after two years two months and by participating in the impugned proceeding subsequent to the impugned show-cause notice which culminated into the final adjudication order dated 22nd December, 2023 which has been challenged by the petitioner in this writ petition now by taking the point that the aforesaid impugned show-cause notice was without jurisdiction in view of Section 174(2) of CGST Act, 2017.

First of all the petitioner after participating in the impugned proceeding which culminated into final adjudication order which itself is an appellable order at this stage challenging before this Court legality of the impugned show-cause notice issued more than two years back on the ground of jurisdiction of the adjudicating authority.

Petitioner in support of his contention relies on an interim order of this Court dated 12th December, 2022 in WPA No. 25886 of 2022 (Saikat Paul – vs – The Superintendent (ADJN), Central Tax, Shibpur Division, Howrah CGST commissionerate & Ors.).

Mr. Banerjee, learned advocate appearing for the respondent opposes this writ petition by contending that at this stage the impugned show-cause notice should not be interfered which has been issued more than two years back and has been culminated into final adjudication order and which is an appellable order and he further contends that correctness of the adjudication order should be tested by the appropriate appellate authority who can reappreciate the factual position and also decide on any jurisdictional issue that may be raised by the petitioner.

In support of his such contention Mr. Banerjee relies on a decision of the Division Bench of this Court dated 13th March, 2023 in FMA No. 1279 of 2022 (Md. Kalim Ansari – Vs – The Superintendent Range – II, Central Tax, Shibpur Division & Ors.) and particularly paragraph 8 of the said order of the Hon'ble Division Bench of this Court which is quoted as hereunder :

"8. Till such time, the respondents/ department shall not initiate any coercive action against the appellant. The appellate authority shall decide the appeal on merits and in accordance with law without rejecting the same on the round of limitation. The appellant shall also be afforded with an opportunity of personal hearing by the concerned appellate authority."

Mr. Banerjee also relies on another decision of the Hon'ble Division Bench of this Court dated 9th June, 2023 in MAT 692 of 2023 (Brinto Kumar Roy – Vs. Union of India & Ors.). in support of his contention that even if the principle of natural justice has been violated and the documents placed for consideration were not taken into consideration by the adjudicating authority even in such case writ court should not interfere with the adjudication order and petitioner should file statutory appeal if the same is appellable.

Considering the facts and circumstances of this case and submission of the parties and in view of availability of alternative remedy by way of statutory appeal and in view of aforesaid Division Bench judgement I am not inclined to entertain this writ petition and grant any relief against the impugned adjudication order. However, considering the request made by learned advocate appearing for the petitioner that petitioner is ready and willing to avail the remedy before the statutory appellate forum by condoning the delay in filing the appeal, liberty is granted to the petitioner to file appeal against the impugned adjudication order in original within thirty days from date and keeping all the points open which has been raised in this writ petition and if such statutory appeal is filed by the petitioner within the time stipulated herein, the appellate authority shall consider and dispose of the appeal on merit without raising the point of limitation.

With this observation and direction this writ petition being WPA 13940 of 2023 stands disposed of.

(Md. Nizamuddin, J.)