26.07.2023
PB
Sl. No.19.

WPA 16171 of 2023

M/s. Central Arya Road Transport,
an Unit of M/s. Cart Infralog Ltd. & Anr.
Vs
Union of India & Ors.

Mr. Avra Majumder,
Mr. Suryaneel Das,
Mr. Chiranjit Pal.
... For the Petitioners.
Mr. K. K. Maiti,
Mr. Tapan Bhanja.
......for the CGST authority.
Mr. Debasish Chaudhuri,
Ms. Sanjukta Gupta.
......for the UOI.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned adjudication order dated 31st March, 2023, passed by the Principal Commissioner of CGST & CX, Kolkata, South, on the ground that there is a procedural irregularity in passing the aforesaid impugned order by contending that in this case pre-show cause notice as per the relevant circular was not issued and petitioner intends to rely upon several decisions on this proposition of law.

In addition, Mr. Mazumder, learned advocate for the petitioner raises another issue of invoking of extended period of limitation for initiating the impugned proceeding.

Mr. Maiti, learned advocate appearing for the respondent CGST authority in opposing the writ petition submits that this writ court should not interfere with the impugned adjudication order since the same is an appellable order under the statute and secondly, that the allegation of the petitioner of invoking extended period of limitation is not sustainable in law in this case since it does fall within the exception under Section 73(1) of the Finance Tax Act, 1994 and further that the pre-show cause notice is not mandatory in cases which falls under those exceptions.

Mr. Mazumder, learned advocate for the petitioner submits that in the facts and circumstances of the case, case of the petitioner does not fall within those exceptions.

Considering the facts and circumstances of the case and submission of the parties, I am not inclined to interfere with the impugned adjudication order for the following reasons:-

i) The impugned adjudication order is an appellable under the statute;

ii) The writ court cannot scrutinize the facts on the basis of which respondent authorities concerned has come to the conclusion that the case of the petitioner falls within the exceptions under Section 73(1) of the Act.

iii) Petitioner has not approached this Court immediately after getting show-cause notice if at all there was any procedural irregularity in issuing the show-cause notice by not issuing pre-show cause notice.

iv) The adjudication order in original has been passed after the petitioner contested the show-cause notice and not being satisfied with the adjudication order after participating in the impugned proceeding, now at this stage petitioner cannot turn around and challenge the impugned order of adjudication, on the ground that in spite of the show-cause notice being issued and he has responded to the same still the impugned adjudication order should be interfered since pre-show cause notice was not issued in this case.

v) The judgments relied upon by Mr. Mazumder, learned advocate for the petitioner, in none of those cases the petitioner has approached the writ Court challenging the action of non-issuance of pre show-cause notice immediately after issuance of show-cause notice and not after passing of the final adjudication order.

In view of the discussions made above, I am not inclined to entertain this writ petition and accordingly, this writ petition being WPA 16171 of 2023 is dismissed.

(Md. Nizamuddin, J.)