29.8.2023
ks
sl. 18

WPA 19432 of 2023

Sujit Kumar Gauand
Vs
Superintendent of CGST & CX, Range-II, Dankuni Division, Howrah CGST Commissionerate & Ors.

Mr. Sandip Choraria
... For the Petitioner.
Mr. K.K. Maiti,
Mr. Tapan Bhanja
... For the CGST Authority.
Mr. Debasish Chaudhuri,
Mr. Gautam Dey
... For the UOI.

Heard learned Advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order in original dated 10th February, 2023, passed by the respondent/ Service Tax Authority concerned by filing this writ petition on 10th of August, 2023, which is after expiry of six months from the date of impugned order in original and after the expiry of period of limitation for filing statutory appeal against the impugned order in original, which is appealable order.

Mr. Maiti, learned Advocate appearing for the respondent/Service Tax Authority concerned opposes this writ petition on the ground of maintainability of the same, mainly on the two grounds:

i) That the efficacious and speedy remedy alternative remedy is available to the petitioner by way of statutory appeal and;

ii) That the petitioner has approached this writ court for barred remedy.

In support of his objection of maintainability of the writ petition in view of availability of alternative remedy, Mr. Maiti, learned Advocate appearing for the respondent/Service Tax Authority relies on an unreported Division Bench's decision of this court dated 28th April, 2023, in the case of 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. in MAT/705/2023 and particularly paragraph 5 of the said unreported decision which is quoted as herein :

"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."

Mr. Maiti in support of his contention that approaching this writ court after the expiry of statutory period of limitation for filing the appeal, which has become barred remedy, and that the writ petition is not maintainable, has relied on a decision of a Division Bench of this court in the case of Cal. Electric Supply Corpn. Ltd. & Anr. vs. Kalavanti Doshi Trust & Ors. reported in 2011(1) CHN(CAL) 182 particularly paragraph 13 of the aforesaid judgment which is quoted herein :

> "As pointed out by the Supreme Court in the case of Chattisgarh State Electricity Board vs. Central Electricity Regulatory Commission & Ors., 2010(5) SCC page 23), in this type of cases, there is even no scope of application of Section 5 of the Limitation Act by taking aid of section 29(2) of the Limitation Act and as such, it is apparent that on the date of presentation of the writ-application, the remedy of the writ petitions was totally barred. It is now settled law that a Writ Court should not by invoking jurisdiction under Article 226 of the Constitution of India revive a barred remedy."

Mr. Choraria, learned Advocate appearing for the petitioner could not distinguish the aforesaid two judgments relied upon by Mr. Maiti and he relies on an earlier unreported Division Bench decision of this court dated 15th March, 2019 in the case of M/s. Kesoram Spun Pipes and Foundries Ltd. vs. Commissioner of Central Excise & Ors. reported in APO No.391 of 2017, on the proposition that the writ petition is maintainable challenging the invoking the extended period of limitation by the Authority under Section 73 of the Finance Act, 1994.

I have considered the facts and circumstances of the case as appears from record and submission of the parties and the judgments relied upon by the parties. On perusal of the aforesaid impugned order I find that the same has been passed neither in contrary to any specific provision of law nor in violation of principles of natural justice nor there is any procedural irregularity in passing the aforesaid impugned order. I also find that the aforesaid impugned order is a well reasoned speaking and order and furthermore, this case is fully covered against the petitioner in view of the aforesaid two judgments relied upon by Mr. Maiti. The unreported judgment relied upon by Mr. Choraria may have been the earlier view of this court but in view of the view taken in a recent decision, by the Division Bench of this court which is binding upon me, I am not inclined to interfere with the impugned adjudication order and, accordingly this writ petition being WPA 19432 of 2023 is dismissed.

(Md. Nizamuddin, J.)