

28.08.2023
PB
Sl. No.25.

WPA 20152 of 2023

Assistant Commissioner of CGST
& CX, BBD Bag-I, Division, Kolkata
North Commissionerate

Vs

The Commissioner, CGST & CX, Kolkata
Appeals-I Commissionerate & Ors.

Mr. K. K. Maiti,
Mr. Tapan Bhanja.

... For the Petitioner.

Mr. Tarun Chatterjee,
Mr. Raju Mondal.

.....for the respondent no.2.

Heard learned advocates appearing for the parties.

In this writ petition, CGST adjudicating authority itself is a petitioner challenging the impugned order dated 19th November, 2022, of the appellate authority, on the ground that the same is without jurisdiction on the face of it in view of Section 107(11) of the CGST Act, under which there is specific bar on the part of the appellate authority of the CGST to remand any matter. Statute confers jurisdiction upon him only either to confirm, modify or anal an order or a decision of the adjudicating authority and the action of remanding the matter to the adjudicating authority is beyond his jurisdiction. Since a pure question of law that the aforesaid impugned order is

without jurisdiction is involved in this writ petition, no affidavit is required by the parties for adjudicating the issue involved in this writ petition and the impugned order is contrary to Section 107(11) of the CGST Act and without jurisdiction on the face of it, the aforesaid impugned order is set aside by remanding the matter to the appellate authority concerned to pass a fresh speaking order in accordance with law and after giving opportunity of personal hearing to the petitioner as well as assessee/ private respondents, within a period of 8 weeks from date.

With this observation and direction, this writ petition being WPA 20152 of 2023 is disposed of.

(Md. Nizamuddin, J.)