

19.09.2023
PB
Sl. No.2.

WPA 21080 of 2023

Nerim Educational Society
Vs
Union of India & Ors.

Mr. Avra Mazumder,
Mr. Kausheyo Roy.
... For the Petitioner.
Mr. Aryak Dutt.
.....For the UOI.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 18th July, 2023, rejecting the application of the petitioner for stay of demand in question by the respondent CIT (Exemption), Kolkata. Allegation of the petitioner is that the demand in question arises out of disallowance of the exemption in question for the sole reason of delay in submitting the Form 10B by only 7 days without filing any application for condonation of delay. Learned advocate for the petitioner submits that rejection of the petitioner's application for stay on the ground of delay in submitting the Form 10B is very harsh and apart from that there is no other ground on which the petitioner's application for stay has been rejected. Petitioner submits that exemption to educational institution

merely on the ground of delay when there is no other allegation against the petitioner is not sustainable in law and in support of his contention, Mr. Mazumder, learned advocate appearing for the petitioner relies on an unreported decision of this Court dated 3rd April, 2023 in ITAT 23 of 2023 (Principal Commissioner of Income Tax, Central 1, Kolkata Vs. M/s. Surendra Steels Pvt. Ltd.) and a reported decision of Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust Vs. Income Tax Officer, (Exemption) reported in (2021) 125 taxmann.com 75 (Gujarat).

Considering the facts and circumstances of the case and submission of the parties and the view taken by the Division Bench of this Court in the case of M/s. Surendra Steels Pvt. Ltd. (supra) and Sarvodaya Charitable Trust (supra), the aforesaid impugned order dated 18th July, 2023, is set aside and the matter is remanded back to the respondent CIT (Exemption), Kolkata to pass a fresh order after giving an opportunity of hearing to the petitioner or its authorized representatives and by taking into consideration the judgments relied upon by the petitioner within two weeks from the date of communication of this order and shall also see the applicability of those decisions in the facts of the case of the petitioner by applying its judicious mind

independently without being influenced by any observation made in this order.

With this observation and direction, this writ petition being WPA 21080 of 2023 is disposed of.

(Md. Nizamuddin, J.)