WPA 28435 OF 2022

09.01.2023
Sl no. 17

Ct no. 2
P.M.

Benay Bhusan Palit Memorial Education Society
- Vs -
The State of West Bengal & Ors.

Ms. Sweta Mukherjee,
Mr. Subhajit Roy
... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T.M. Siddiqui,
Mr. N. Chatterjee,
Mr. D. Sahu.
.... For the State

Supplementary affidavit filed by the petitioner be kept with the record.

Heard learned Counsel appearing for the parties.

This writ petition has been filed for the relief by way of direction upon the respondents authority concerned to bear the additional tax liability for execution of subsisting Government contracts either awarded in the pre-GST regime or in the post GST regime without updating the Schedule of Rates (SOR) incorporating the applicable GST while preparing Bill of Quantities (BOQ) for inviting the bids. The petitioner has also prayed for relief of issuance of direction upon the respondents authority concerned to neutralize the impact of unforeseen additional tax burden on Government contracts since the introduction of GST w.e.f. 1st July, 2017 for ongoing contract awarded before the said date and to update the State SOR incorporating applicable GST in lieu of inapplicable West Bengal VAT henceforth.

Considering the submissions of the parties this writ petition is disposed of by giving liberty to the petitioner to file appropriate representations in the aforesaid regard as referred in preceding paragraph of this order, before the Additional Chief Secretary, Finance Department, Government of West Bengal within four weeks from date. On receipt of such representations the Additional Chief Secretary, Finance Department shall take a final decision within four months from the date of receipt of such representation after consulting with all other relevant departments concerned.

Needless to mention that such representations shall be considered and final decision will be taken up by the Additional Secretary, after giving opportunity of hearing to the petitioner or its authorized representatives. Till the final decision is taken by the Additional Chief Secretary, no coercive action shall be taken against the petitioner. In case of default in making representations within the time stipulated herein this order will not have any force.

It is also recorded that the Additional Chief Secretary, while taking decision on the representations to be filed by the petitioner shall act in accordance with law and pass a reasoned and speaking order on merit and after considering all the judgements of different High Courts upon which petitioner intends to rely.

In addition the petitioner has challenged the impugned order of the appellate authority dated 1st September, 2022 under the relevant provisions of WBGST Act rejecting the appeal of the petitioner on the ground of limitation of four days.

Considering the facts and circumstances of this case the aforesaid impugned order of the appellate authority dismissing the appeal of the petitioner purely on technical ground of delay of four days without going into the merit of the appeal in question, the same is set aside and the matter is remanded back to the appellate authority concerned to consider and dispose of the aforesaid appeal in question on merit and in accordance with law by passing a reasoned and speaking order after giving an opportunity of hearing to the petitioner or its authorities representatives within a period of twelve weeks from the date of communication of this order.

With this observation and direction this writ petition being WPA 28435 of 2022 stand disposed of.

(Md. Nizamuddin, J.)