Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

46 20.09.2023
Ct. no. 2
S.Bag

WPA/336/2023

DHURBA KUMAR PRADHAN
VS
DEPUTY COMMISSIONER OF
REVENUE BUREAU OF
INVESTIGATION AND ORS.

Mr. Boudhayan Bhattacharya
Ms. Stuti Bansal
Ms. T. Roy
Mr. B. Ghosh

...for the petitioner

Mr. Hirak Barman
Mr. B. Ghosh

...for the State

Mr. Biswaraj Agarwal
Mr. Shankar Sarkar

...for the respondent no. 4

The grievance of the petitioner is directed against an order dated 7th September, 2020, passed by the respondent no. 2 in a proceeding initiated under Section 74 of the West Bengal Goods and Services Tax Act, 2017 (WBGSTA).

It is submitted on behalf of the petitioner that save and except a summary of an order dated 7th September, 2020, no final order has ever been served on the petitioner. It is further submitted on behalf of the petitioner that under Rule 142 of the West Bengal Goods and Services Tax Rules 2017, the respondent authorities were obliged to furnish a copy of the final order to the petitioner. This has not been done. As such, the petitioner has been unable to prefer any appeal. It is also submitted on behalf of the petitioner that since no copy of the final order has been served on the petitioner under Section 74(9) of the WBGSTA, there has been violation of the principles of nature justice. Thus, the impugned order is liable to be set aside.

On behalf of the respondent authorities, it is submitted that there has been undue and inordinate delay on behalf of the petitioner. There is a specific statutory embargo under Section 107 of the WBGSTA which provides for remedy by way of a statutory appeal. The petitioner has not availed of this remedy. The plea that though the petitioner came to learn of the summary of the impugned order, no final order was made available is misleading. The summary of the order was uploaded on the portal as far back as on September, 2020. The petitioner has slept over his right for a period of more than three years and thereafter filed this writ petition with oblique and ulterior purpose.

In view of the statutory embargo in Section 107 of the Act and the remedy of appeal which the petitioner has failed to avail of, there is no scope of exercising any discretion in favour of the petitioner. A statutory remedy cannot be circumvented in such a circuitous manner. The contemporaneous uploading of the summary of the impugned order in the online portal in FORM GST DRC-07 would ex-facie suggest that the petitioner was deemed to have had knowledge of the final order. This is also provided for in Rule 142(5) of the West Bengal Goods and Services Tax Rules 2017. Rule (6) provides that the summary of the order shall be treated as notice for recovery and the petitioner was statutorily obliged to seek a copy of the same from the respondent authorities. On a combined reading of the aforesaid Rules, it would be evident that the petitioner is deemed to have had knowledge of the final order contemporaneously and the plea that no final order had been made available after a period of 3 years is deliberate and ill motivated.

In view of the efficacious statutory alternative remedy being available to the petitioner and failure to avail of the same this writ petition stands dismissed as not maintainable.

(Ravi Krishan Kapur, J.)