OD – 5

ORDER SHEET
IA GA 1 2023
WPO/2004/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. JITEN ENGINEERING WORKS
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 28th February, 2023.

Appearance:
Mr. Rahul Tangri, Adv.
Ms. Udita Saraf, Adv.
...For the petitioner

Mr. A Ray, Ld. GP
Mr. S. Mukherjee, Adv.
Mr. Debasish Ghosh, Adv.
Mr. D. Sahu, Adv.
...For the State

Mr. Kaushik Dey, Adv.
...For respondent no. 7

The Court : Petitioner has filed this writ petition being aggrieved by the impugned action of the respondent Authority concerned taking coercive measure for recovery of the demand in question and challenging the same on the ground that such action is contrary to well-settled principles of law that before the expiry of the statutory period of filing an appeal the adjudicating authority concerned cannot take coercive measure to recover while admittedly in this case such coercive action of recovery has been taken by the adjudicating authority before expiry of the statutory period of filing the appeal.

Learned advocate appearing for the petitioner submits that against the impugned adjudication order it has already filed the appeal and there is a condition precedent for filing the appeal that it will have to deposit 10% of the disputed tax and in the instant case amount recovered by the adjudicating authority is more than 10% of the pre-deposit and petitioner prays for refund of the balance amount after adjusting with the 10% of the pre-deposit from the amount recovered by the authority concerned.

Mr. Ghosh opposing the writ petition submits that appeal in question has already been dismissed confirming the order of the adjudication order in question and such order of the appellate authority is further appealable before the Tribunal which forum is not available at present and the condition precedent for filing the appeal before the Tribunal is making further pre-deposit of 20% of the disputed tax. Petitioner has no objection if further 20% and in total 30% of the disputed tax is retained as pre-deposit and the balance amount is refunded to the petitioner.

In support of his contention, petitioner relies on a decision of this Court in the case of "Purulia Metal Casting (P.) Ltd. vs. Assistant Commissioner of State Tax, Purulia" reported in [2022] 145 taxmann.com 347 (Calcutta).

Mr. Ghosh, learned advocate representing the respondent Authority concerned could not place any judgment and order to show that the aforesaid order in the case of Purulia Metal Casting (P.) Ltd. (supra) has either been stayed or reversed by any Appeal Court till date.

Considering the facts and circumstances of this case, this writ petition being WPO 2004 of 2022 along with IA GA 1 of 2023 is disposed of by directing the respondent Authority concerned to refund the balance amount after retaining 30% from the same as pre-deposit, within a period of four weeks from the date of communication of this order. The retaining of that 30% of the pre-deposit will abide by the result of the further appeal, if filed against the order of the appellate authority.

(MD. NIZAMUDDIN, J.)

TR/