OD –13

WPO/1152/2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SHAH BROTHERS AND ANOTHER
VERSUS
COMMISSIONER OF STATE TAX AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 31st March, 2023.

Appearance:
Mr. Anil Kumar Dugar,Adv.
Mr. Rajarashi Chatterjee,Adv.
Mr. Gobinda Dey,Adv.
Mr. Rounak Majumdar,Adv.
...for the petitioner.

Mr. T.M.Siddiqui,Adv.
Mr. D. Ghosh,Adv.
Mr. N. Chatterjee,Adv.
...for State.

The Court:-Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned orders dated 31st March, 2021 and 22nd September, 2021 passed by the respondent GST authority rejecting the claim for refund to the petitioner on the ground of limitation.

Learned advocate for the petitioner submits that the impugned order of rejection is bad in law for the reason that petitioner had made the claim of refund in question though after the expiry of two years as prescribed under the statute but within the period extended by the order of the Hon'ble Supreme Court and followed by other High Courts. In support of his contention, he has relied upon an unreported decision of the Bombay High Court dated January 10, 2022 passed in Writ Petition (L) No. 1275 of 2021 (Saiher Supply Chain Consulting Pvt. Ltd. Vs. The Union of India & Anr.) and also unreported decision of the Madras High Court dated September 28, 2021 passed in W.P. No. 18165 of 2021 & WMP Nos. 19386 & 19389 of 2021 (M/s. GNC Infra LLP Vs. Assistant Commissioner (Circle) Ekkatuthangal, Commercial Tax Department).

Mr. Siddiqui, learned advocate appearing for the State, who was asked to consider the aforesaid unreported decisions, very fairly submits that in the facts of the present case the aforesaid decisions are covered in favour of the petitioner, and that the matter should be remanded back to the officer concerned to consider afresh and pass an order on merits.

Considering the submission of the parties, this writ petition being WPO No. 1152 of 2021 is disposed of by setting aside the impugned orders dated 31st March, 2021 and 22nd September, 2021 with a direction upon the respondent authority concerned to consider the petitioner's application in question afresh on merits, and not on the point of limitation, and in accordance with law by passing a reasoned and speaking order, within eight weeks from the date of communication of this order.

(MD. NIZAMUDDIN, J.)

s.chandra