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ORDER SHEET
WPO/1669/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

KUSUM INDUSTRIAL GASES LIMITED
VS
THE INCOME TAX OFFICER WARD 4/4 AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 5th October, 2023.

Appearance:
Mr. J.P. Khaitan, Adv.
Mr. Saurav Bagaria, Adv.
Mr. Rites Goel, Adv.
...For the Petitioner
Mr. Om Narayan Rai, Adv.
...For the Respondents

The Court: Heard Mr. Khaitan, learned senior advocate appearing for the petitioner and Mr. Rai representing the respondent Income Tax Authority concerned.

By this writ petition, petitioner has challenged the impugned order of rejection of petitioner's application under Section 220(6) of the Income Tax Act, 1961 to not to treat it as an assessee in default during pendency of the appeal against the assessment order in question which was considered by the assessing officer by asking it to pay 20% of the demand and the petitioner is not satisfied with the aforesaid order on the ground of financial hardship as well as on merit of the impugned assessment order itself.

I am of the considered view that in spite of non-consideration of the petitioner's application under Section 220(6) of the Act if according to the petitioner even in that event the petitioner is not remediless for the redressal of grievance it has raised and the relief asked for and the remedy is available to an assessee before the appellate authority for stay of any demand or not to treat the assessee in default by the CIT (Appeals) which is a settled law.

Considering the facts and circumstances of the case, this writ petition being WPO 1669 of 2023 is disposed of by granting liberty to the petitioner to make appropriate application before the CIT (Appeals) concerned for treating the assessee petitioner as not in default/stay of the impugned demand, within a week from date and if such application is made by the petitioner before the appellate authority within the time stipulated herein, the appellate authority concerned shall consider and dispose of such application within two weeks from the date of receipt of such application by passing a reasoned and speaking order after giving opportunity of hearing to the petitioner or its authorised representative. If petitioner files the aforesaid application within the time stipulated herein before the appellate authority and files proof of filling of the same before the assessing officer concerned, the assessing officer shall not take any coercive action for recovery of the demand in question till the order is passed by the appellate authority on the aforesaid application.

It is clarified that this Court has not gone into the merit of the application under Section 220(6) of the Act and the appellate authority concerned shall consider the same strictly in accordance with law and by applying his judicious mind.

(MD. NIZAMUDDIN, J.)

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