

04.04.2024

Sl no. 38

Ct no. 2

P.M.

WPA 8081 OF 2024

Nandini Shroff

- Vs -

Union of India & Ors.

Mr. Ashok Banerjee, Sr. Adv.
Ms. Monika Kalra,
Mr. Yashashwi Sundariya,
Mr. Syed Shabahat Hussain Kazmi,
Mr. Sanjay Budhia,
Mr. Shailender Mishra,
Mr. Sushil Mishra,
Ms. Prerna Vishwas,
Ms. Shilpa Jati

... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal,

... for the State

Mr. Vipul Kundalia,
Mr. Soumen Bhattacharya,
Mr. Amit Sharma

... for Union of India

Mr. K. K. Maiti,
Mr. Tapan Bhanja

... for CGST Authorities.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order in original dated 27th December, 2023 passed under Section 73 of the CGST Act which is an appellable order under the CGST Act.

The allegation of the petitioner in this writ petition is that the impugned adjudication order should have been passed after having full-fledged

investigation involving criminal issue relating to fraudulent and misuse of tax payer's login credentials and the allegation of the petitioner is that petitioner's user ID and password have been fraudulently changed by someone for his/her wrongful gain with an illegal and wrongful intention to cause wrongful loss to the petitioner.

This Court fails to understand as to how the aforesaid nature of allegation of fraud which is fully criminal in nature can be taken cognizance by the writ Court in exercise of constitutional writ jurisdiction under Article 226 of the Constitution of India while the impugned order is the adjudication order under Section 73 of the CGST Act which is an appellable order under the statute and adjudication proceeding has been initiated in accordance with law and the petitioner has participated in the proceeding and there is no allegation of denial of opportunity of hearing to the petitioner before passing the impugned order. It is also not a case that the impugned statutory appellable adjudication order has been passed is non-speaking or is contrary to any specific provision of law or there is any procedural irregularity or that the authority who has

passed the order is having inherent lack of jurisdiction.

Considering the nature of allegation made by the petitioner in challenging the impugned adjudication order and on perusal of the impugned adjudication order, I am of the considered view that the allegation of the petitioner is purely criminal in nature and petitioner intends this Court to invoke constitutional writ jurisdiction under Article 226 of the Constitution of India by acting as an investigation authority or as an appellate authority over the impugned adjudication order and to reappreciate the material evidence and the issue raised is purely criminal in nature which is not within the ambit and scope of constitutional writ jurisdiction.

The judgement relied upon by Mr. Banerjee, learned senior advocate representing the petitioner, in the case of *The Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. – Vs – K. S. Jagannathan & Anr.* reported in AIR 1987 Supreme Court 537, in support of his contention that the writ Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can exercise its jurisdiction, in the facts and

circumstances of this case is distinguishable both on facts and law.

I find that the aforesaid case relied upon by the petitioner is not applicable in the present case since in the said case while considering the promotion in Indian Audit and Accounts department, specific instruction of the Government Memo was not followed and no allegation of criminal offence was involved which is petitioner's own case herein.

In view of the discussion made above this writ petition being WPA 8081 of 2024 is dismissed on the ground of alternative remedy by way of statutory appeal against the impugned adjudication order under the CGST Act.

Furthermore, dismissal of this writ petition will not be a bar on the part of the petitioner to seek remedy before any forum in accordance with law with regard to the nature of allegation which are criminal in nature.

(Md. Nizamuddin, J.)