06.05.2024
Item No.
ML-6
Court No.5
Saswata

W.P.A. 8512 of 2024

Probir Ghosh
-vs-
The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray
Mr. Paban Kumar Ray
Mr. Amit Saha
Ms. Shiwani Shaw
...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. T.M.Siddiqui
Mr. D. Sahu
...For the State

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ petition has been filed, inter alia, challenging the pre show cause notice dated 22nd November 2022 issued under Section 74 of the WBGST Act, 2017[1], the show cause notice dated 31st March 31st March 2023 issued for the period 2017-18 and the order dated 16th June 2023 issued by the respondent no. 3 forming annexure P-9 to the writ petition.
3. Mr. Ray, learned advocate appearing for the petitioner by drawing attention of this Court to the pre show cause notice and the show cause notice forming part of the writ petition submits that the aforesaid show cause notice including the order under Section 74 of the said Act had not been uploaded in the *"view notices and orders"* section of the portal. The same were in fact uploaded in the *"additional notices and orders"* section.

[1] Hereinafter referred to as the "said Act"

4. According to him, inasmuch as the aforesaid notices were uploaded in the *"additional notices and orders"* section the petitioner had missed the said notice and had otherwise been prevented from responding to the same, which resulted in passing of the ex parte order dated 16th June, 2023. He submits that inasmuch as the petitioner had been prevented from responding to the show cause notice, the final order passed under Section 74 of the said Act cannot be sustained as the same stands vitiated by reasons of violation of principles of natural justice. In support of his contention that the aforesaid notices ought to have been published in the *"view notices and orders"* section Mr. Ray places reliance on a judgment delivered by the High Court of Judicature at Madras in the case of ***Sabari Infra Pvt. Ltd. versus Assistant Commissioner (ST)***[2].
5. In the facts as noted hereinabove, he prays for the entire proceeding to be set aside and the matter be remanded back to the respondent no.3 for adjudicated from the stage of issuance of the pre show cause notice.
6. Mr. Ray, learned GP appearing on behalf of the State respondents vehemently opposes the prayer of the petitioner. He submits that the petitioner has an alternative remedy. According to him the order passed under Section 74 of the said Act is appealable under Section 107 of the said Act. In any event, he submits that despite the fact the petitioner making a tall claim that the notices in question including the order dated 16th June, 2023 issued under Section 74 of the

[2] (2023) 10 Centax 92 (Mad)

said Act, had not been uploaded in the *"view notices and orders"* section and for reasons whereof, the petitioner had missed the said notices, no statement had been made in the petition as to when the petitioner had came to learn with regard to the aforesaid notices or with regard to order passed under Section 74 of the said Act.

7. By placing reliance on Section 169(1)(d) of the said Act it is submitted that the said notices had been duly published in a common portal to which the petitioner had access. Inasmuch as the notices had been published in a common portal, the petitioner cannot claim that he had missed the notice or otherwise had been prevented from responding to the show cause.

8. Heard the learned advocates appearing for the parties and considered the materials on record.

9. In this case I notice that although, the petitioner claims that the notices in question including the final order passed under Section 74 of the said Act had been uploaded in *"additional notices and orders"* section instead of *"view notices and orders"* section, no statement has been made by the petitioner as to when the petitioner came to learn with regard to the factum of uploading of the notices/order.

10. In view of the aforesaid and by reason of failure on the part of the petitioner to make appropriate disclosure as to when he had come to learn with regard to factum of uploading of aforesaid notices, I am not inclined to exercise discretion in favour of the petitioner.

11. However, taking note of the fact that the petitioner has an efficacious alternative remedy in, the form of appeal I am of the view that the petitioner should be permitted to approach the appellate authority under Section 107 of the said Act. However, at the same time since, it is not in dispute that the notices in question including the order passed under Section 74 of the said Act had been uploaded in *"additional notices and orders"* section instead of *"view notices and orders"* section and without going into the controversy at this stage as to whether uploading of the notice in the *"additional notices and orders"* section constitutes due service of notice within the meaning of Section 169 (1)(d)of the said Act, I am of the view that the petitioner should be permitted to approach the appellate authority.

12. If the petitioner approaches the appellate authority within a period of 6 weeks from date along with appropriate application for condonation of delay, the appellate authority shall hear out and dispose of the application for condonation of delay and on condoning the delay shall dispose of the appeal on merits subject to the petitioner complying with the provisions as regards pre deposit. It may, however, be noted that the learned Government Pleader had objected to this Court granting liberty to the petitioner in preferring the appeal since according to him, time to prefer the appeal has been expired.

13. I make it clear that the appellate authority, while deciding an application for condonation of delay under

Section 5 of the Limitation Act, 1963, shall be guided by the pronouncement of the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***S.K.Chakraborty & sons versus Union of India***[3] as also the judgment delivered by this Court on 1st May 2024 in case of **Mukul Islam versus The Assistant Commissioner of Revenue, State Tax Cooch Behar Range & Ors. (WPA 917 of 2024)**

14. With the above directions and observations, the writ petition being WPA 8515 of 2024 is disposed without any order as to costs.

15. All parties to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)

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[3] (2024) 123 GSTR 229