19.06.2024
Item No.
M/L 25
Court No.5
Saswata

W.P.A. 12663 of 2024

Bishwapriya Chowdhury
Versus
The State of West Bengal & Ors.

Mr. Saroj Banerjee
Ms. J. Jana
Mr. S. Das
...For the petitioner

Mr. T.M.Siddiqui
Mr. Saptak Sanyal
...For the respondents

1. The present writ petition has been filed, inter alia, challenging the appellate order dated 2nd March 2023 passed under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act").

2. The petitioner claims to be a proprietorship firm and in usual course after being awarded with work order for construction of toilets issued by the Executive Enginerer, Burdwan Panchayat Samity under *Swach Bharat Mission,* had executed the same. It is contended that the services and supplies effected by the petitioner were exempted. Notwithstanding the aforesaid, pursuant to a show cause notice issued by the respondents, an order was passed under Section 74 of the said Act in respect of the financial year 2020-21 for the tax period from April 2020 to March 2021 on 9th June, 2022, determining the liability of the petitioner.

3. Being aggrieved, the petitioner had preferred an appeal which culminated in the order dated 2nd March 2023, whereby the appellate authority was, inter alia, pleased to modify the same by recording that the determination

in question arises out of actual non-charging of tax on outward supplies. Such finding was returned by the appellate authority by accepting the plea taken by the petitioner that since, the petitioner had undertaken the work under *Swach Bharat Mission,* he did not include the tax component in the invoices and that there was no willful misstatement or suppression for evasion of tax nor was it a case of fraud as such the case was covered under Section 73 of the said Act.

4. Be that as it may, at the time of hearing of the present writ petition, Mr. Banerjee learned advocate appearing for the petitioner, on instruction, submits that the petitioner no longer claims exemption from the provisions of the said Act. In the facts as noted above, he seeks leave to withdraw the present writ petition. He, however, submits that necessary liberty should be afforded to the petitioner to raise appropriate debit notes on the concerned Panchayat Samity.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I am of the view that since, the petitioner seeks leave to withdraw the writ petition nothing survives in the writ petition and the writ petition being WPA 12663 of 2024 is **dismissed as withdrawn** without any order as to costs.

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

(*Raja Basu Chowdhury, J.*)