04.09.2024
Item No.
AD 2
Saswata

**W.P.A. 13789 of 2024**
**Yogesh Kumar Agarwal**
**versus**
**Deputy Commissioner of Revenue, State Tax, Bally & Salkia Charge & Ors.**

Mr. Sandip Choraria
Mr. Rishav Manna
...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, AGP
Mr. Tanoy Chakraborty
Mr. S. Sanyal
Mr. N.Chatterjee
...For the State

1. Being aggrieved by an order passed by the proper officer on 19th September 2023 under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period July 2017 to March 2018, an appeal was filed before the appellate authority under Section 107 of the said Act. Such appeal was rejected by an order dated 30th March 2024, inter alia, on the ground that the same had been filed without complying with the provisions of Section 107(6) of the said Act.

2. Mr. Choraria, learned advocate appearing in support of the instant writ petition would submit that already a sum or Rs.45,00,000/- has been recovered from the petitioner and as such there can be no impediment in hearing the matter on merits. He submits that although the petitioner has a statutory right to file an appeal before the appellate tribunal, since the appellate tribunal has not yet been constituted, the present writ petition has been filed.

3. Mr. Siddiqui, learned Additional Government Pleader, by placing before this Court a fact sheet dated 28th

August 2024 prepared by the respondent no. 1 would submit that on the basis of the records available with him, a sum of Rs.31,56,814/- has been recovered from the petitioner by debiting his credit ledger. He submits that these are factual issues and having regard to the recovery made the matter may require reconciliation, but the same does not, in any way, render the order passed by the appellate authority, bad since according to the respondents the petitioner did not comply with the provisions of Section 107(6) of the said Act.

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

5. Admittedly in this case, it is noticed that a sum of Rs. 31,56,814/- out of total demand on account of tax amounting to Rs.65,20,423/- as appearing in Form GST DRC – 07 dated 19th September 2023 has already been recovered. The petitioner further claims that he had also made a voluntary deposit and that a sum of Rs. 45,00,000/- in aggregate has already been paid/recovered against the above demand. Ordinarily, this Court would be required to embark an enquiry by reconciling the accounts since, the petitioner has been denied the benefit of approaching the appellate tribunal.

6. Having regard to the peculiar facts of this case, I am of the view that in fitness of things, it would be prudent to remand the matter back to the appellate authority and having regard to the admitted recovery, there can no longer be any impediment in hearing out the appeal on merits, since a sum in excess of 10 per cent of the tax which is in dispute has been recovered from the petitioner.

7. Thus, while staying the order dated 30th March 2024, I remand the matter back to the appellate authority for reconsidering the same afresh, having regard to the observations made hereinabove.

8. With the above observations and directions, the writ petition being WPA 13789 of 2024 is accordingly disposed of.

9. 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.*)**