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16.07.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14296 of 2024

Santosh Kumar Shaw
Versus
State of West Bengal & Ors.

Mr. Nilotpal Chowdhury
Mr. Prabir Bera
Mr. Deepak Sharma
... For the petitioner.

Mr. Anirban Ray
Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Debraj Sahu
...For the State respondents.

1. The present writ petition has been filed, inter alia, challenging the adjudication order dated 18th August, 2021, passed under Section 74(9) of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), as well as the appellate order dated 10th November, 2022 passed under Section 107 of the said Act.
2. The petitioner also challenges the attachment of the petitioner's bank account and prays that the petitioner may be permitted to operate its bank account.
3. It is the petitioner's case that pursuant to a show cause notice dated 21st April, 2021, issued under Section 74 of the said Act, for the tax period July, 2017 to March, 2018, that an order under Section

74(9) of the said Act dated 18th August, 2021 was passed.

4. Since, the order was passed during the Covid period, according to the petitioner, the appeal could not be filed in time. However, when the petitioner filed the appeal along with the pre-deposit as is required for maintaining the appeal under the provisions of the said Act, the appellate authority had purported to reject the same by an order dated 10th November, 2022, on the ground that the same was filed beyond the time prescribed after giving the benefit of the judgment delivered by the Hon'ble Supreme Court which permitted the exclusion of period of limitation between 15th March, 2020 till 20th February, 2022 with a further period of 90 days from 1st March, 2022. In the interregnum, however, the respondents had issued two several orders of attachment dated 2nd December, 2021 and 24th January, 2022 under Section 79(1) (c) of the said Act, thereby attaching the petitioner's bank account.

5. Mr. Chowdhury, learned advocate appearing on behalf of the petitioner submits that on the one hand, the petitioner had been prevented from preferring an appeal as the Appellate Tribunal under Section 112 of the said Act is yet to be

constituted on the other hand the respondents have been recovering the dues payable by the petitioner from its electronic cash/credit ledger. According to him, more than 60% of the amount of tax due has already been recovered. He submits that the petitioner should not be penalized for the Tribunal not being constituted. In the facts as noted hereinabove, he prays that the respondents should be directed to refund the amount recovered.

6. By drawing attention of this Court to Section 112(8) of the said Act it is submitted that in the event the petitioner was permitted to appeal before the Appellate Tribunal, the respondents could have, at best, realized 30% of the total amount of tax due. In this case more than 60% of the total amount of tax has already been realized by the respondents. Having regard to the aforesaid, there is no justification to continue with the orders of attachment. He submits that no further recovery proceeding should be initiated or continued against the petitioner till such time the Appellate Tribunal is set up or in the alternative, the matter may be remanded back to the appellate authority for a decision afresh.

7. Mr. Siddiqui, learned advocate enters appearance on behalf of the State respondents. He submits that

the petitioner initially chose not to question the order passed under Section 74(9) of the said Act and no appeal was filed within the time prescribed. After rejection of the appeal, by an order dated 10th November, 2022, for almost one and a half years no steps have been taken by the petitioner. As such no interference in this matter is called for.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is noticed that although an adjudication order was passed by the proper officer under Section 74(9) of the said Act on 18th August, 2021, the petitioner, though belatedly, preferred an appeal. One cannot lose sight of the fact that such appeal was filed during the pandemic period. Simultaneously with the filing of the appeal the petitioner had made a pre-deposit as is required for maintaining an appeal under Section 107(6) of the said Act. As such, the petitioner's *bone fide* cannot be questioned. It appears that the appeal was barred by time. The appellate authority, despite giving the benefit of the judgment delivered by the Hon'ble Supreme Court, having found the appeal was barred by time had been pleased to reject the said appeal. Although, the petitioner has an alternative remedy in the form of an appeal before

the Appellate Tribunal, I find that such Tribunal is yet to be constituted. In the interregnum, the petitioner's bank accounts have been attached by issuing orders under Section 79(1)(c) of the said Act. Although, Mr. Siddiqui, learned advocate appearing on behalf of the State respondents has strenuously urged that by reasons of the delay, the present writ petition should not be entertained, I am of the view that since, the statute confers a right to the petitioner to challenge an order passed under Section 107 of the said Act, such right cannot be taken away, especially when the Appellate Tribunal is yet to be constituted. Although I was prompted to stay the recovery proceeding till such time the Appellate Tribunal is set up, however, taking note of the fact that the appeal under Section 107 of the said Act has not been decided on merits, for the ends of justice, I remand back the matter to the appellate authority with a direction upon the appellate authority to hear out and dispose of the appeal on merits upon giving an opportunity of hearing to the petitioner. The appellate authority shall not grant any unnecessary adjournment to the petitioner. The petitioner shall be at liberty to submit documents and/or raise all points as may be advised.

9. Further taking note of the fact that substantial amount has already been recovered in addition to the deposit made by the petitioner under Section 107(6) of the said Act, I am of the view that the orders of attachment cannot be permitted to continue.

10. In view thereof, the attachment order dated 2nd December, 2021, appearing at page 76 of the writ petition and the order dated 24th January, 2022, appearing at page 77 of the writ petition, are set aside.

11. The aforesaid order shall not impinge upon the rights of the respondents to seek recovery of the dues in accordance with law, if so advised.

12. Needless to note that till disposal of the appeal under Section 107 of the said Act the consequence of provisions of Section 107(7) of the said Act shall follow.

13. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)