15.07.2024
Item No.
AD 7
Saswata

W.P.A. 14356 of 2024

Industrial Pumps & Motors Agencies & Anr.
versus
Deputy Commissioner of State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
...For the petitioners

Mr. A.Ray Ld. GP
Mr. Md. T.M.Siddiqui
Mr. S. Shaw
Mr. S. Sanyal
Mr. D. Sahu
...For the State

1. The present writ petition has been filed challenging an order dated 5th June 2023 passed by the appellate authority under the provisions of WBGST/CGST Act 2017 (hereinafter referred to as the "said Act").

2. The petitioner no. 1 is a partnership firm and is engaged in dealing in wide range of flow solutions, inter alia, including industrial duty pumps (hereinafter referred to as "goods"). In usual course of business the petitioner had supplied certain goods to M/s Durgapur Steel Plant which were covered by invoice dated 7th May 2022 and for the purpose of transportation, had generated an e-way bill dated 7th May 2022 at around 1.09 PM, which was valid till the midnight of 8th May 2022.

3. It is the petitioners' contention that in course of movement, the petitioners' conveyance developed some mechanical issues and was required to stop for few hours which led to the delay in transportation. Incidentally, when the aforesaid goods reached DVC more at Durgapur, Paschim Burdwan which is 10 kms away from the destination, since it was detected that the e way bills had expired, the conveyance in question which was carrying the said goods was prevented along with the goods from proceeding further by the respondent no.1. This was

followed by a physical verification and a report to that effect was prepared on 10th May 2022.

4. It would appear from the said report that the only reason for which the goods had been detained was by reason of expiry of the e way bill. No other reason was pointed out. Subsequently, a detention order was also issued on 10th May 2022. The said order also recorded that the goods were not covered by valid documents. It is the petitioners' contention that a show cause notice in Form GST MOV-07 dated 10th May 2022 was issued under Section 129(3) of the said Act. Following the aforesaid an order of demand of tax and penalty in Form GST MOV 09 dated 12th May, 2022 was issued. According to the petitioners, they had upon payment of the demand for penalty had got the goods released and thereafter, had filed an appeal under Section 107 of the said Act.

5. According to the petitioners inasmuch as the order passed under Section 129(3) of the said Act was not uploaded, the petitioners were compelled to file an appeal in physical form and could not do so electronically.

6. Mr. Kanodia, learned advocate appearing for the petitioners by referring to the document appearing at page 61 of the writ petition submits that upon presentation of the appeal from the order dated 12th May 2022 the respondents had acknowledgement the same. According to the petitioners since, the petitioners had already made a payment of 200 per cent of the penalty in terms of Section 129(1)(a) of the said Act, the petitioners at the time of filing of the appeal were not required to make deposit of 25 per

cent of penalty, as is required under Section 107(6) of the said Act.

7. It appears that the appellate authority by proceeding on the premise that the appeal had been filed manually contrary to the provisions of Rule 108(1) of the WBGST /CGST Rules, 2017 (hereinafter referred to as the "said Rules"), dismiss the said appeal.

8. Mr. Sanyal appears on behalf of the respondents.

9. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, it would appear that admittedly the order passed under Section 129(3) of the said Act was not uploaded. As such, the petitioners, in my view, were prevented from preferring the appeal electronically. Having considered the 1st proviso to Rule 108 (1) of the said Rules, although, it appears that an amendment had been introduced in the rules to take into consideration an identical issue of this nature where the order under appeal had not been uploaded electronically, yet as pointed out by Mr. Sanyal, learned advocate appearing for the State that the said provision had been introduced only on 4th August 2023, i.e., after passing of the order which forms subject matter of challenge in the instant writ petition. As such it cannot be said that the appellate authority had passed a grossly illegal order, inasmuch as the amendment to Rule 108(1) first proviso was introduced later. However, in my view the appellate authority ought to have taken into consideration the fact that the petitioners were unable to appreciate the purport of the order in absence of the same being uploaded

and had thereby, been prevented from filing the appeal electronically. In this context, the order passed by the appellate authority appears to be a mechanical one.

10. In view thereof, the order passed by the appellate authority stands set aside, the appeal is restored and the matter is remanded back to the appellate authority. The appellate authority shall hear out and dispose of the appeal on merits within a period of 8 weeks from the date of communication of this order in accordance with law.

11. With the above observations and directions, the writ petition being WPA 14356 of 2024 is accordingly disposed of.

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.*)