Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 14910 of 2024
Snehasis Panja
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Promit Majumder Ms. Uzma Ali
For the respondents	:	Mr. Anirban Ray, Ld. GP, Mr. T. M. Siddiqui Mr. T. Chakraborty Mr. Saptak Sanyal
Heard on	:	3rd July, 2024
Judgment on	:	**3rd July, 2024**.

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.

2. The present writ petition has been filed, inter alia, challenging the order dated 16th February, 2024 passed by the appellate authority under Section 107 of the Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (Hereinafter referred to as the "said Act").

3. It is the petitioner's case that being aggrieved by the order dated 25th March, 2023, passed under Section 73 of the said Act for

the tax period July, 2017 to March, 2018, the petitioner had filed an appeal on 17th December, 2023.

4. Simultaneously, with the filing of the appeal, the petitioner had deposited the pre-deposit amount, as is required to be deposited in terms of Section 107(6) of the said Act, for maintaining the said appeal.
5. Subsequently, the petitioner having come to learn with regard to the notification dated 2nd November, 2023, which permitted the petitioner's appeal to be regularized which was time-barred, subject to payment of 12.5% of the amount of tax in dispute, the petitioner had caused the balance amount aggregating to 12.5% of the amount of tax in dispute to be deposited with the GST authorities on 30th January, 2024, within the period of validity of the said notification.
6. The appellate authority, however, by its order dated 16th February, 2024, was, inter alia, pleased to reject the said appeal on the ground that the petitioner cannot not be entitled to the benefit of the said notification since, the payment made by the petitioner was against creation of voluntary liabilities and not in accordance with the notification no.53/23 dated 2nd November, 2023.
7. Mr. Majumder, learned advocate representing the petitioner submits that the aforesaid order passed by the appellate authority cannot be sustained. There is no basis for the appellate

authority in concluding that the payments made by the petitioner were made for creation of voluntary liabilities. He submits that this Hon'ble Court may be pleased to set aside the same and direct the respondents to accept the appeal to be in order with a further direction upon the appellate authority to dispose of the appeal within a particular time period.

8. Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents. He submits that although, a scheme was introduced which enable the tax payers to maintain appeals which were filed beyond the period of limitation by making payment of an additional 2.5% of the amount of tax in dispute, provided the same was filed within the period provided in the said notification dated 2nd November, 2023. Since, the petitioner did not comply with the said terms and did not make payment of the additional 2.5% of the tax in dispute, the appellate authority had rejected the appeal.

9. By drawing attention of this Court to the provisions of Section 73(8) of the said Act and Rule 142(3) of the CGST/WBGST Rules, 2017, it is submitted, that the registered tax payer is within its authority to make voluntary payment of tax. Ordinarily all voluntary payments of tax are made through Form No. GSTDRC-03. In this case, since the payment of tax was made under GSTDRC-03, it is obvious that the payment was made against creation of voluntary liabilities. The appellate authority had

correctly recorded the factum of such payment as payment made for creation of voluntary liabilities. Having regard to the aforesaid, it is submitted that no interference is called for.

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

11. Admittedly, in this case, it may be noticed that the order dated 25th March, 2023 has been passed under Section 73(9) of the said Act in respect of the tax period July, 2017 to March, 2018. It is also admitted position that the appeal had been filed beyond the prescribed period of limitation, on 17th December, 2023. It may be noticed that when the appeal was filed, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs by Notification No. 53/2023 dated 2nd November, 2023, had in effect, permitted regularization of appeals filed beyond the prescribed period of limitation, provided the same arose out of the orders passed by the proper officer under Section 73 or Section 74 of the said Act on or before 31st March, 2023 and such appeal was filed on or before 31st January, 2024.

12. Paragraph 3 of the said notification, inter alia, provides that no appeal shall be filed under this notification, unless the appellant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to twelve and a half per

cent of the remaining amount of tax in dispute arising from the said order subject to maximum of twenty-five crores rupees, in relation to which the appeal has been filed, out of which at least twenty per cent should have been paid by debiting from the Electronic Cash Ledger. There are other conditions in the said notification which are not relevant for the present purpose.

13. It appears that on 30th January, 2024, the petitioner before the closure of the period prescribed for availing the benefit under the said notification had made deposit in Form GST-DRC-03 and in the reasons column had categorically recorded as follows:-

> "*Payment of pre-deposit 20 per cent amount from cash ledger under Appeal Amnesty Scheme for appeal no. AD1912230114500 dated 17/12/2023.*"

14. Although, Mr Siddiqui, learned advocate representing the respondents has strenuously argued that payments made in DRC-03 is in relation to payment of liabilities arising out of demand/show cause notice/ orders passed under the provisions of the said Act and the payment as aforesaid cannot be treated as payment within the meaning of the said notification and that the appellate authority had rightly discounted the same by treating the aforesaid payment as a payment against creation of voluntary liabilities, I am afraid, I am unable to accept the same. The payment made in Form GST DRC-03 dated 30th January, 2024, would undisputedly demonstrate that the same was

not made against any show cause notice or against any particular order but was made in connection with the appeal and in terms of the aforesaid notification. In fact, one of the conditions of the aforesaid notification for availing the benefit has been recorded in the remarks column of the aforesaid Form GST DRC-03. The respondents have also not been able to identify any particular Form under which the pre-deposit for maintaining any appeal in terms of the aforesaid notification is required to be made.

15. Having regard to the aforesaid, the observation made by the appellate authority that the payments were made against creation of voluntary liabilities by the petitioner appears to be perverse and is based on no evidence.

16. In view thereof, the order dated 16th February,2024 passed by the appellate authority under Section 107 of the said Act is set aside.

17. The matter is remanded back to the appellate authority with a direction upon the appellate authority to treat the aforesaid deposit made by the petitioner in From GSTDRC-03 dated 30th January, 2024, as a deposit within the meaning of the aforesaid notification dated 2nd November, 2023 with a further direction upon the appellate authority to hear out and dispose of the appeal within a period of 8 weeks from the date of

communication of this order by giving an opportunity of personal hearing to the petitioner.

18. It is made clear that this Court has not gone into the merits of the matter and it shall be open to the appellate authority to decide the matter without being influenced by any of the observations made hereinabove.

19. With the above directions and observations, the writ petition is disposed of without any order as to costs.

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

(Raja Basu Chowdhury, J.)

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