

W.P.A. 15339 of 2024

**Parmar Sandip Chamanbhai
versus
The State of West Bengal & Ors.**

Ms. Sweta Mukherjee
Mr. Rituraj Chakraborty

...For the petitioner

Mr. A. Ray, Ld. GP
Mr. Md. T.M. Siddiqui
Mr. T. Chakraborty
Mr. D. Sahu
Mr. S. Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.
2. The instant writ petition has been filed, inter alia, praying for a direction upon the respondents to release the amount of Rs.5,22,500/- from the bank guarantee furnished by the petitioner, so that the same can be utilised for making payment of the pre-deposit for preferring the appeal which is a sum equal to 25 per cent of the penalty determined under Section 129(3) of the WBGST /CGST Act, 2017 (hereinafter referred to as the “said Act”).
3. Mr. Mukherjee, learned advocate appearing for the petitioner by drawing attention of this Court to the order dated 10th August 2023 passed in WPA 15591 of 2023 submits that although, the earlier writ petition was filed challenging the order dated 26th May 2023 passed under Section 129(3) of the said Act, however, this Court was, inter alia, pleased to dispose of the writ petition by granting liberty to the petitioner to challenge the said order before the appellate authority, provided the petitioner makes payment of a sum of Rs.10 lakhs within a period of 10 days and file proof of such payment along with the bank guarantee for the balance amount of penalty in question.
4. Ms. Mukherjee, further by drawing attention of this Court to the bank guarantee at page 62 of the writ petition

submits that the petitioner had since secured the entire amount of penalty as determined under Section 129 of the said Act and had got the goods released upon executing a bond on 25th August 2023 itself. Factum of such release of the petitioner's goods and the conveyance would corroborate from the release order dated 25th August 2023. She submits that once, the entire penalty had already been secured by way of a bank guarantee and payment of Rs.10 Lakhs, the petitioner is not required to make any further payment for the purpose of maintaining an appeal and as such, she prays for modification of the order dated 10th August 2023. She further submits that the respondents are not accepting the appeal without the pre-deposit.

5. Mr. Ray, learned Government Pleader, on the other hand submits that although, the petitioner had got the goods released upon executing a bond and a bank guarantee, however, since the consignor and the consignee are non-existent, no relief should be afforded to the petitioner at this stage. He further submits that a Coordinate Bench of this Court, taking into consideration all factors, inter alia, including the petitioner's readiness and willingness to deposit Rs.10 lakhs with the respondents, had been pleased to pass a conditional order dated 10th August 2023, such order should not be interfered with.

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

7. I find that while the Coordinate Bench of this Court by its order dated 10th August 2023 had directed the petitioner to make payment of Rs.10 lakhs, and the balance

amount of the penalty by bank guarantee, the Coordinate Bench of this Court had also granted the petitioner, the liberty to file the appeal. It is further noticed that the petitioner by making payment of Rs.10 lakhs, and by securing the balance amount through bank guarantee and by execution of bond had also got the goods released. In my view the moment the petitioner had made the aforesaid payment of Rs.10 lakhs and caused the bank guarantee to be executed in terms of the order dated 10th August 2023, the right of the petitioner to prefer an appeal crystallized into a full-fledged right which can neither be taken away nor can the respondents call upon the petitioner to make payment of any additional amount in terms of the proviso to Section 107(6) of the said Act.

8. Having regard to the aforesaid, I am of the view that the petitioner, though may not be entitled to the refund of Rs.5,22,500/- or any part thereof, the respondents cannot at the same time withhold the right of the petitioner to prefer an appeal from the order passed under Section 129(3) of the said Act, inter alia, on the ground that the petitioner has not made a further pre-deposit of 25 per cent of the determination already made under Section 129 (3) of the said Act.

9. Having regard to the above, I am of the view that in the event, the petitioner files an appeal with the respondents within 2 weeks from date, such appeal shall be heard and disposed of on merits without the respondents insisting for any further pre-deposit.

10. With the above observations and directions, the writ petition being WPA 15339 of 2024 is accordingly disposed of.

11. 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.)