31.07.2024
Item No.
AD 6
Saswata

W.P.A. 15841 of 2024

Badal Maity
versus
Union of India & Anr.

Mr. Prithwish Roy Chowdhury
...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the State

Mr. U.S.Bhattacharya
Mr. B.Mukherjee
...For the CGST authorities

1. Affidavit of service filed in Court today is retained with the record.

2. It is the petitioner's case that the petitioner is a Registered Tax Payer. According to the petitioner, a scrutiny notice was issued. Although, the petitioner had been served with a notice intimating the discrepancies in the return after scrutiny in Form GST ASMT-10 dated 22nd September 2022, the petitioner could not respond to the same. Subsequently, a proceeding under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") was initiated by issuing a show cause notice dated 4th July 2023 for the tax period 1st July 2017 to 31st March 2018. The same ultimately culminated in the order dated 7th December 2023.

3. It the petitioner's case that the aforesaid order has been passed by ignoring the fact that the petitioner had reversed the ITC. Factum of such reversal of ITC would corroborate from Form GSTR-3B. Unfortunately, the same

was ignored by the proper officer while passing the aforesaid order.

4. Mr. Roy Chowdhury, learned advocate appearing for the petitioner submits that this Court may be pleased to set aside the order passed under Section 73 of the said Act and permit the petitioner to respond to Form GST ASMT – 10.

5. Mr. Ray, learned Government Pleader submits that the petitioner has an alternative remedy in the form of an appeal under Section 107 of the said Act. According to him, the petitioner without exhausting such remedy should not be permitted to approach this Court. Admittedly, the petitioner did not respond to the show cause notice and as such, the proper officer cannot be faulted for having passed the aforesaid order.

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

7. It appears that the petitioner claims to have reversed the ITC by filing Form GSTR-3B. Unfortunately, as the petitioner did not file his response, the proper officer was not in a position to take into consideration the aforesaid.

8. Be that as it may, without going into the merits as to whether the petitioner had at all reversed the ITC, I am of the view that the petitioner, at the first instance, should approach the appellate authority under Section 107 of the said Act. In the event, the petitioner pays Rs.10,000/- with the GST authorities towards costs and files the appeal along with the pre deposit, as is required for maintaining the appeal under Section 107 of the said within a period of 4 weeks from the date of this order, the appellate authority shall hear out and dispose of the appeal on merits by taking

into consideration the contentions of the petitioner by passing a reasoned order within a period of 8 weeks from the date of communication of this order.

9. It is made clear that this Court had not gone into the merits of the case and it shall be open to the appellate authority to hear out and dispose of the appeal on merits being uninfluenced by any of the observations made herein by this Court.

10. With the above observations and directions, the writ petition being WPA 15841 of 2024 is disposed of.

11. All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)