17.09.2024
Sl. No. 4.
D/L.
Mithun
Ct.No.5

WPA 16152 of 2024

Amit Gupta.
Vs.
The State of West Bengal & Ors.

Mr. Siddhantha Pratim Datta,
Ms. Sanjana Jha,
Mr. Rhitam Chatterjee
..for the petitioner.
Mr. A. Ray,
Mr. T.M. Siddique,
Mr. T. Chakraborty,
Mr. S. Sanyal
…for the State.
Ms. Sayani Roy Chowdhury,
Mr, Debtanoy Banerjee,
Ms. B. Mondal
…for respondent no.5.

1. Challenging an order dated 18th May, 2023 passed by the Proper Officer under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred as to as the "said Act") for the tax period April 2021 to March 2022, as also challenging the order dated 28th December, 2023 passed by the Appellate Authority under Section 107 of the said Act, the instant writ petition has been filed.

2. The petitioner also challenges the order dated 4th September, 2023 passed in Form GST DRC-13 whereby the petitioner's bank account maintained with AXIS Bank has been attached.

3. The petitioner would submit that although the petitioner had questioned the merits of the adjudication order before the Appellate Authority, the Appellate Authority without adjudicating the same on merits had dismissed the appeal on the ground of delay in submission of appeal. He would submit that the appeal was accompanied by payment of pre-deposit as is required for maintaining the appeal. Although the petitioner has an alternative remedy before the Appellate Tribunal, since the Tribunal is yet to be constituted, the present writ petition has been filed. He submits that this Hon'ble Court may be pleased to take up the matter and adjudicate the same on merits. According to the petitioner, 20% of the amount of tax in dispute has already been deposited with the respondents.

4. Mr. Siddique, learned Advocate on behalf of the respondents would submit that the petitioner has only deposited 10% of the amount of tax in dispute and the claim made by the petitioner that 20% of the amount of tax in dispute, has been deposited, is incorrect. He submits that in the event, this Hon'ble Court takes up this

matter for adjudication on merits, the respondents are likely to lose out on a forum and having regard thereto, it is submitted that subject to the petitioner depositing an additional 10%, the matter may be remanded back to the appellate authority for adjudication on merits.

5. Having heard the learned Advocates appearing for the respective parties and taking note of the fact that the appellate Tribunal is yet to be constituted, and the requirement to reconcile the accounts including considerations of factual issues pertaining to the order passed by the proper officer, I am of the view that it would be prudent at this stage to remand the matter back to the appellate authority for adjudication on merits.

6. However, at the same time taking note of the fact that an attachment order has already been issued, in the event the petitioner deposits a sum equivalent to the 10% of the remaining amount of tax in dispute in addition to the sum already deposited by the petitioner, within a period of 3 weeks from date, the order of attachment issued in Form GST DRC-13 dated 4th September, 2023 shall stand quashed and

the matter shall be heard out and disposed of by the appellate authority on merits as expeditiously as possible, preferably within a period of 12 weeks from the date of deposit of the additional amount as directed hereinabove.

7. With the above observation, the writ petition is disposed of.

8. There shall be no order as to costs.

9. All parties including the bank are to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)