08 **28.08.24**
Ct. No.05
Sws.M

WPA 16435 of 2024

Resinous Chemicals(India) Private Limited & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Aman Agarwal
Ms. Shivansi Indoria
....for the petitioners

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

1. Challenging a communication of rejection of appeal in Form GST APL – 02 dated 3rd April, 2024, the present writ petition has been filed.
2. Mr. Agarwal, learned advocate appearing on behalf of the petitioners submits that although the petitioners have a statutory right of appeal before the appellate tribunal, since the appellate tribunal is yet to be constituted, the present writ petition has been filed. By drawing attention of this Court to the order passed under Section 73 of the WBGST/CGST Act 2017 (hereinafter referred to as the "said Act") dated 6th April, 2023 for the tax period July, 2017 to March, 2018, he submits that no reasons have been disclosed by the proper officer for determining the petitioners' liability. According to Mr. Agarwal, the order passed by the proper officer under Section 73 is an ex-parte order and the petitioners were not aware with regard to the same. The concerned

chartered accountant did not appropriately intimate the petitioners with regard to the order passed in the proceeding which resulted in the delay in filing the appeal. The petitioners had, however, though belatedly, filed an appeal along with the pre-deposit as was required for maintaining the appeal. The appellate authority, however, has rejected the said appeal. No reasons had been assigned for such rejection excepting, recording the delay in submission of appeal in Form APL-02 dated 3rd April, 2024. In such circumstances, he submits that this Hon'ble Court may be pleased to take up this matter and hear the same on merits.

3. Mr. Siddiqui, learned Additional Government Pleader submits that in the instant case the petitioners did not respond to the show-cause. As such the order passed by the proper officer cannot be faulted. The appeal filed by the petitioners was out of time. Having regard to the same he submits that there is no irregularity on the part of the appellate authority in rejecting the appeal on the ground of delay.

4. Having heard the learned advocates appearing for the respective parties, I find that the petitioners did not respond either to the notice in DRC-01A or to the notice in DRC-01. Having

regard thereto the proper officer had determined the liability. Though ordinarily, such an order having regard to the conduct of the petitioners, cannot be said to be bad, however, upon a closer scrutiny of such order it would transpire that the proper officer had failed to give any reasons apart from recording that the petitioners had failed to respond to the notice issued in DRC-01A or to the notice in DRC-01. The appellate authority had also rejected the appeal on the ground of delay. There has been no appropriate consideration of the matter on merits at any stage.

5. Having regard to the peculiar facts of the case and taking note of the fact that the petitioners have already deposited 12.5 percent of the amount to the tax in dispute, I remand the matter to the appellate authority for adjudicating on merits. The appellate authority shall hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of eight weeks from the date of communication of this order.

6. Needless to note that during pendency of the appeal the demand raised by the proper officer in Form GST DRC-07 dated 6th April, 2023 for the

tax period July, 2017 to March, 2018 shall remain stayed.

7. The order of rejection of the appeal in Form GST APL-02 dated 3rd April, 2024 stands set aside.

8. With the above observations and directions, the writ petition is disposed of.

9. There shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Raja Basu Chowdhury, J)