

M/L 128
14.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16328 of 2024

M/s. Bhakat Battery House & Ors.
Versus
The State of West Bengal & Ors.

Ms. Rita Mukherjee
Mr. Pranit Bag
Mr. Ghanshyam Jha
... For the petitioners.

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

1. Affidavit of service filed in Court today is taken on record.
2. The present writ petition has been filed, *inter alia*, challenging the adjudication order dated 31st October, 2023, passed under Section 73(9) of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”).
3. Ms. Mukherjee, learned advocate appearing on behalf of the petitioners would submit that although a notice in Form GST DRC -01 dated 29th August, 2023 was served and despite the fact that the petitioners had responded to the same appropriately explaining why the proceedings should be dropped, the proper officer under the said Act by glossing over the petitioners’ response had purported to pass the order under Section 73(9) of the said Act.

4. She submits that no opportunity of hearing was either afforded or granted to the petitioners, though the statute itself contemplates grant of such opportunity, irrespective of the fact whether the petitioners made a request in writing, since, the show cause itself contemplates passing of an adverse order against the petitioner.
5. She further submits that the aforesaid order was passed contrary to the circular no.CBIC 183/15/2022 GST dated 27th December, 2022. She would submit that although the aforesaid circular was brought to the notice of the proper officer by a communication as appearing at page 74 of the writ petition, the proper officer by ignoring the same had passed the order impugned.
6. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the respondents would submit that due opportunity of hearing was given to the petitioners to respond to the show cause. He would submit that prior to issuance of show cause, a pre-show cause notice was also served. The petitioners responded to the show cause and participated in the proceedings. The order had been passed on 29th October, 2023. Nearly, 8 months thereafter, the present writ petition has been filed complaining

violation of statutory provisions. It is submitted that the petitioners despite having a right and remedy in the form of an appeal before the appellate authority had chosen not to file an appeal within the prescribed period of limitation. At this belated stage, this Hon'ble Court ought not to entertain the present writ petition.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that the petitioners in this case complain that their response to the show cause was not considered. I, however, notice in the order passed under Section 73 of the said Act, the proper officer had categorically noted that the response filed by the petitioners along with the documents has been taken into consideration. In view thereof, it cannot be said that the petitioners response was not considered or the proper officer had glossed over the same while passing the order impugned. The sufficiency or otherwise of the response, and the appreciation thereof by the proper officer, in my view, cannot form the subject matter of consideration in a writ petition under Article 226 of the Constitution of India.

8. Independent of the above, although, the petitioners complain of violation of statutory provisions of not being afforded with an opportunity of hearing, I find

that such issue has been raised as and by way of an afterthought. The order impugned had been passed on 31st October, 2023. The petitioners chose not to file an appeal within the prescribed period of limitation. Having regard to the same, since, the petitioners have not taken steps to challenge the same with the time prescribed and also having not approached this Court expeditiously, I am of the view that this Court ought not to extend any relief in favour of the petitioners especially when the petitioners have an alternative remedy in the form of an appeal although, the time to prefer an appeal has long expired. No attempt has till date been made by the petitioners for filing an appeal by appropriately explaining the delay in filing the same. Having regard to the above, no interference is called for.

9. At this stage, Ms. Mukherjee, learned advocate appearing on behalf of the petitioners submits that leave may be granted to the petitioners to file an appeal before the appellate authority. She submits that the petitioners had been wrongly advised and as such no appeal had been filed previously.

10. Having regard the above, subject to payment of costs of Rs.10,000/- to be paid by the petitioners to the respondents, leave is granted to the petitioner no.1 to

prefer an appeal from the order dated 31st October, 2023, before the appellate authority provided such appeal is filed within two weeks from date.

11. If such appeal is filed, the appellate authority having due regard to the above shall hear out and dispose of the appeal on merits, subject to compliance of other formalities by the petitioners.
12. With the above observations and directions, the writ petition is disposed of.
13. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)