26.07.2024
Item No. 15
Court No.5
Saswata

W.P.A. 16444 of 2024
Frontline (NCR) Business Solutions Private Limited & Anr.
Versus
The State of West Bengal & Ors.

Mr. Aman Agarwal
Mr. V.Baisya
...For the petitioners
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the State

1. The present writ petition has been filed, inter alia, challenging the orders passed by the appellate authority on 31st January 2024 as also on 28th May 2024 under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act").

2. Being aggrieved by the order dated 30th May 2023 passed under Section 73 of the said Act for the tax period July 2017 to March 2018, the petitioner no.1 had preferred an appeal. Unfortunately, while filing the appeal, the petitioner no.1 only paid 1 per cent of the amount of tax in dispute in place and stead of 10 per cent of the amount of tax in dispute as required for maintaining an appeal under Section 107(6) of the said Act. It appears that the appellate authority had proceeded to dismiss the said appeal by an order dated 31st January, 2024

on the ground of delay. The petitioners, however, candidly submit that since the petitioners did not make payment of the required pre deposit for maintaining an appeal, the appeal stood dismissed.

3. It is in the facts as noted hereinabove and since there was no decision on merits, the petitioner no.1 had once again, by making payment of the 10 per cent of the amount of tax in dispute as is required for maintaining an appeal under Section 107 of the said Act, filed another appeal on 5th February, 2024. Factum of filing of such appeal would corroborate from the Form GST APL – 01 appearing at page 57 of the writ petition. Such appeal was also dismissed by the appellate authority by its order dated 28th May, 2024 on the ground of delay. From the order impugned it would transpire that although, the petitioner no.1 was issued a show cause notice as to why the appeal shall not be dismissed on the ground of delay, since, none appeared on behalf of the petitioners to explain the reasons for delay, the appeal was dismissed.

4. According to Mr. Agarwal, learned advocate appearing for the petitioners, there was only a delay of 1 month and 7 days. Unfortunately, for reasons beyond the control of the petitioners, the

petitioners could not appropriately explain the delay in preferring the appeal by appearing in person. There has, however, been no decision on merits. He submits that in the facts of the case, this Court may be pleased to set aside the impugned order and remand the matter back to the appellate authority to re-hear the matter afresh on merits.

5. Mr. Chakraborty, learned advocate appearing for the respondents, however, submits that the petitioners initially did not prefer the appeal along with the pre deposit, as is required for maintaining the appeal. Such appeal was also delayed. Subsequently, after dismissal of the appeal, the petitioners had filed another appeal in respect of the self-same cause of action, though there is no sanction in law for filing the same. He, however, acknowledges the fact that the petitioners, by filing a subsequent appeal had paid further 10 per cent of the amount of the tax in dispute as is required for preferring such appeal. It is submitted that the petitioners did not offer any proper explanation for the delay. As such, the appellate authority cannot be faulted for rejecting the appeal.

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

7. Admittedly, in this case a determination has been made by the proper officer under Section 73 of the said Act. The petitioners claim to be aggrieved by the same. Initially, the petitioner no.1 had preferred an appeal by depositing 1 per cent of the amount of tax in dispute. Admittedly, such appeal was filed beyond the time prescribed for preferring the appeal and the same was also not accompanied with the proper pre deposit for maintaining the appeal. The appeal was defective and was accordingly rejected without entering into the merits. Subsequently, the petitioner no.1 once again had preferred another appeal from self same order passed under Section 73 of the said Act and on this occasion, the petitioner no.1 had deposited a further pre deposit of 10 per cent of the amount of tax in dispute. The aforesaid appeal was filed within 6 days from the date of rejection of the defective appeal.

8. Admittedly, therefore, the appeal filed by the petitioner no.1 on this occasion as well was out of time. Although, Mr. Chakraborty submits that there is no sanction in law to file a subsequent appeal and that the appeal was filed beyond the

time prescribed, I find that there is no lack of *bona fide* on the part of the petitioners in preferring the appeal. The appeal filed on 6th October, 2023, which was rejected on 31st January, 2024, apart from being belatedly filed was defective as the amount required for pre deposit was not made. Following the same within five days, the subsequent appeal along with the required deposit was filed on 5th February, 2024. The appeal filed on 6th October, 2024 was a defective appeal. There has been no decision on merit. The petitioners do not stand to gain by filing a belated appeal.

9. Taking into consideration the aforesaid and since, the petitioners had already paid approximately 11 per cent of the amount of tax in dispute, i.e., more than the amount required for maintaining an appeal under Section 107(6) of the said Act, I am of the view that the matter is required to be remanded back to the appellate authority. The appellate authority is directed to re-hear the appeal on merits upon giving opportunity of hearing to the petitioners. As a sequel thereto, the orders passed by the appellate authority dated 31st January, 2024 and 28th May, 2024 are set aside.

10. It is made clear that this Court has not gone into the merits of the case and it shall be open to the parties to raise all issues before the appellate authority except the issue of maintainability of the appeal and the point of limitation.

11. The appellate authority shall decide the matter being uninfluenced by any of the observations of this Court.

12. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

13. With the above observations and directions, the writ petition being WPA 16444 of 2024 is accordingly disposed of.

14. 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.*)