20.08.2024
Item No.
ML 133
Saswata

W.P.A. 16529 of 2024

Manohar Radios
versus
Assistant Commissioner of Revenue, State Tax, Chandni Chowk & Princep Street Charge & Ors.

Mr. Debanuj Basu Thakur
…For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal
Mr. D. Sahu
…For the respondents

1. Challenging the adjudication order passed under Section 73 of the WBGST/CGST Act 2017 (hereinafter referred to as the “said Act”) for the tax period from July 2017 to March 2018, dated 18th July, 2023 the present writ petition has been filed.

2. Mr. Basu Thakur, learned advocate appearing for the petitioner submits that although the petitioner had made payment of a sum of Rs.401/-, Rs.36,039/- and Rs.136,785/- in Form GST DRC – 03 on 5th February 2020 on account of interest for IGST, CGST and SGST respectively, concerning the tax period from July 2017 to March 2018, the same amount has been included in the show cause notice dated 19th April, 2023, which ultimately culminated in the order of adjudication dated 18th July, 2023. It is submitted that inasmuch as the petitioner, by reasons of oversight did not file its response to the aforesaid show cause notice, factum of such payment could not be brought to the notice of the proper officer. Mr. Basu Thakur submits that this Court may be pleased to set aside the

adjudication order and direct the respondents to reconsider the same in the light of the disclosure made by the petitioner in the present writ petition, as regards payment made in Form GST DRC - 03 dated 5th February 2020.

3. Mr. Ray, learned Government Pleader appearing for the respondents, submits that the petitioner chose not to respond to the show cause and permitted the order to be passed by the proper officer on 18th July 2023. Subsequently, even though a part of the demand to the extent of Rs.2,58,539/- had been realized from the petitioner, the petitioner chose not to challenge the same. According to him, the present writ petition has been filed at this belated stage, and there is also no explanation for the delay in filing the same. In any event, it is submitted that the petitioner has an alternate remedy in the form of an appeal and this Court in exercise of its extra ordinary writ jurisdiction ought not to entertain the present writ petition.

4. Having heard the learned advocated appearing for the respective parties and taking note of the fact that the petitioner had not contested the proceeding before the proper officer and having not filed its response to the notice issued in Form GST DRC-01A and the notice in Form GST DRC – 01 and having permitted the order under Section 73 to be passed on 18th July, 2023, there is no scope to interfere with the adjudication order passed under Section 73 of the said Act at this stage.

5. However, taking note of the fact that a portion of the demand had already been realized from the petitioner, I am of the view that in the event, the petitioner approaches the appellate authority within a period of two weeks from date

and makes payment of a cost of Rs.10,000/- to the respondents and on production of receipt of payment of Rs.10,000/- as aforesaid before the appellate authority, the appellate authority having regard to the pendency of the writ petition before this Court, shall condone the delay in filing the appeal and shall hear out the same on merits as expeditiously as possible, preferably within a period of 8 weeks from the date of filing of the appeal, subject to compliance of other formalities, including payment of necessary pre-deposit.

6. The appellate authority, however, while computing the pre-deposit shall give credit to the amount already realized from the petitioner.

7. With the above directions and observations, the writ petition being WPA 16529 of 2024 is accordingly disposed of.

8. 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.*)