14.08.2024
Item No.
ML 116
Saswata

W.P.A. 16573 of 2024

Ashok Kumar Saha
versus
The State of West Bengal & Ors.

Mr. P.Majumdar
Ms. U. Ali
…For the petitioner
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. D.Sahu
…For the State

1. The present writ petition has been filed, inter alia, challenging the show cause notice dated 23rd August 2023 for the tax period from July 2017 to March 2018 issued in Form GST DRC – 01 as also the order dated 5th December 2023 passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") for the self same assessment year.

2. Mr. Majumdar, learned advocate appearing for the petitioner by referring to the show cause notice issued in Form GST DRC – 01 dated 28th February 2023 for the tax period from July 2017 to March 2018 submits that the aforesaid show cause notice was dropped by the authorities by passing an order dated 22nd August 2023. On the very next date, i.e., on 23rd August 2023, a fresh show cause was issued. According to him, the show cause dated 23rd August 2023 is beyond the scope of the original pre-show cause notice issued in Form GST DRC – 01A. He, however, submits that there is no statutory provision which empowers the authority from proceeding further on the basis of an order passed under Section 73 of the said Act, whereby the proceedings under the said Act stands dropped.

3. He submits that since the proceeding initiated by the proper officer by issuing show-cause on 23rd August, 2023 is without jurisdiction, the order passed by the proper

officer on 5th December, 2023 is also without jurisdiction. Accordingly, the same should be set aside.

4. Mr. Ray, learned Government Pleader appearing for the respondents submits that though the petitioner did not respond to the said show cause, the petitioner had, in compliance with the show cause notice, made payment of a part of the tax. Subsequently, an adjudication order was passed by proper officer on 5th December, 2023. According to Mr. Ray, at this stage this Court should not interfere with the order passed by the proper officer, especially in view of the fact that there is an efficacious alternate remedy available to the petitioner.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that despite being served with a show cause notice, the petitioner chose not to respond. However, the petitioner appears to have complied with the show cause notice though partially and had paid tax liability to the extent of Rs.7,651.16/- each for CGST & WBGST by making payment thereof, in Form GST DRC – 03 on 20th September 2023.

6. Having regard thereto, I am of the view that the petitioner having not previously challenged the jurisdiction of the proper officer to issue the show-cause notice, cannot be permitted to approach this Court at this stage after the adjudication order under Section 73 of the said Act has been passed.

7. It is made clear that this order shall not stand in the way of the petitioner in approaching the appellate authority, if so advised. If such appeal is filed within a period of two

weeks from date along with the application for condonation of delay, the appellate authority having regard to the peculiar facts of the case, by condoning the delay, shall hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of 8 weeks from the date of filing such appeal, subject to compliance of all other formalities by the petitioner.

8. With the above observations and directions, the writ petition being WPA 16573 of 2024 is accordingly disposed of without any order as to costs.

9. 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.*)