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**20.08.2024**
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

**WPA 16655 of 2024**

Shree Shyam Dealcom Pvt. Ltd. & Anr.
Versus
The Assistant Commissioner of State Tax & Ors.

Ms. Rita Mukherjee
Mr. Abhijat Das
Ms. Aratrika Roy
... 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. Challenging the order passed under Section 74 of the CGST/WBGST Act, 2017 (hereinafter referred to the "said Act") for the tax period May, 2018 to October, 2018 dated 31st May, 2023 an appeal was filed under Section 107 of the said Act. At the time of hearing of the appeal, though the appellant did not appear, the appellate authority rejected the appeal by holding that there is no ground to interfere with the order passed by the proper officer under Section 74(9) of the said Act. He also recorded his satisfaction that the order passed by the proper officer is correct and complete.

3. Mr. Das, learned advocate appearing on behalf of the petitioners would, however, submit that it was the

obligation on the part of the appellate authority to give reasons in his order when specific ground had been taken challenging the adjudication order. Ordinarily, if an appellant does not appear, the appellate authority could have dismissed the appeal for default. However, in this case, since, the appellate authority chose to decide the same on merits, the appellate authority was obliged to give reasons for his decision. On such ground, the aforesaid order passed by the appellate authority on 25th January, 2024 cannot be sustained and the same should be remanded back to the appellate authority for re-adjudication on merits.

4. Mr. Siddiqui, learned advocate enters appearance on behalf of the State respondents. He submits that on 20th December, 2023 the appellant chose not to appear and it is for such reason that the appellate authority had rejected the appeal and had confirmed the order passed by the proper officer.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that on 20th December, 2023 the appellant did not appear at the time of hearing of the appeal. The appellate authority, however, instead of dismissing the appeal for default had proceeded to adjudicate the appeal on merits while recording his satisfaction that the order passed by the proper officer is correct and complete. Unfortunately

while doing so he had failed to give reasons. He had also not dealt with any of the grounds as set forth in the appeal filed by the petitioners. In absence of reasons it becomes extremely difficult to understand the basis of the satisfaction of the appellate authority in concluding that the order passed by the proper officer is correct. Failure to give reasons, in my view, goes against the principle of natural justice and vitiates the very order itself.

6. Having regard to the aforesaid, I am of the view that the order passed by the appellate authority on 25th January, 2024 cannot be sustained and the same is accordingly set aside. The matter is remanded back to the appellate authority for readjudication on merits. The appellate authority having regard to the provisions of Section 107 of the said Act shall hear out and dispose of the appeal on merits upon giving an opportunity of hearing to the petitioners as expeditiously as possible, preferably within a period of eight weeks from the date of communication of this order.

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

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.)**