04.09.2024
Item No.
AD 2
Saswata

W.P.A. 16918 of 2024
Vishal MVR Consortium & Anr.
versus
The State of West Bengal & Ors.

Mr. Shamsher Alam
...For the petitioners

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

1. Challenging an order passed on 18th September 2023 under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period April 2019 to March 2020, an appeal was filed before the appellate authority under Section 107 of the said Act. Since, the appeal was filed beyond the prescribed period, the petitioners had also filed an application under Section 5 of the Limitation Act, praying for condonation of delay. The appellate authority, however, by its order dated 29th April 2024 was pleased to reject the appeal on the ground of delay.

2. Mr. Alam, learned advocate appearing for the petitioners submits that out of the total amount of tax in dispute a sum of Rs.83,59,879/- has already been recovered in addition to the pre deposit to the extent of Rs.14,84,374/- made by the petitioners at the time of filing of the appeal. He submits that although the petitioners have been provided with an opportunity to prefer a statutory appeal before the appellate tribunal since, the appellate tribunal is yet to be constituted, the instant writ petition has been filed. Having regard to the recovery

already made it is submitted that this matter should be considered on merits by this Court.

3. Mr. Siddiqui, learned Additional Government Pleader, while acknowledging the fact that a sum of Rs.83,59,879/- has been realized from the petitioners in addition to the pre deposit of Rs.14,84,374/-, submits that having regard to the recovery made, further re conciliation shall be required. However, since appeal was filed admittedly beyond the period of limitation, according to him there is no irregularity on the part of the appellate authority in rejecting the petitioners' appeal.

4. Having heard the learned advocates for the parties and considered the materials on record, without going into the issue as to whether the appellate authority has rightly dismissed the appeal, it would transpire that admittedly in this case substantial recovery has already been made. Having regard thereto and taking note of the fact that the appellate tribunal is yet to be constituted, I am of the view that this matter, as rightly pointed out by Mr. Siddiqui, would require reconciliation of accounts.

5. Having regard thereto, I am of the view that it shall be prudent at this stage to remand the matter back to the appellate authority for further re consideration on merits as well as for the purpose of re conciliation of the accounts. In view thereof, the order passed by the appellate authority on 29th April 2024 is set aside and the matter is remanded back to the appellate authority. The appellate authority is further directed to hear out and dispose of the appeal on merits as expeditiously as possible, preferably within a

period of 6 weeks from the date of communication of this order.

6. Since, the appeal is restored and since an amount in excess of 10 per cent of the amount of tax in dispute has already been recovered, having regard to the provision contained in Section 107(7) of the said Act, the demand raised by the respondents in Form GST DRC – 07 dated 18th September 2023 for the tax period from April 2019 to March 2020 shall remain stayed. As a sequel thereto, the notice issued in Form GST DRC – 13 dated 8th February 2024 appearing at page 41 of the writ petition stands quashed.

7. With the above observations and directions, the writ petition being WPA 16918 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.*)