Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 16974 of 2024

Flemingo Dutyfree Shop Pvt. Ltd. & Anr.
Vs.
The Deputy Commissioner of Revenue & Ors.

For the petitioners	:	Mr. Ankit Kanodia Ms. Megha Agarwal Mr. Piyus Khaitan
For the State	:	Mr. Anirban Ray, Ld. GP Mr. T.M. Siddiqui, Ld. AGP Mr. Tanoy Chakraborty Mr. Saptak Sanyal Mr. Debraj Sahu
Heard on	:	28.08.2024.
Judgment on	:	**28th August, 2024.**

Raja Basu Chowdhury, J:

1. Challenging *inter alia* an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said act") dated 8th April, 2024 for the tax period from April, 2018 to March, 2019 the present writ petition has been filed.
2. Mr. Kanodia, learned advocate appearing on behalf of the petitioners would submit that under similar set of circumstances a

previous show-cause notice in Form GST DRC-01 dated 30th August, 2023 had been issued in respect of the tax period July, 2017 to March, 2018. By drawing attention of this Court to the order of dropping adjudication proceeding under Section 73 of the said act dated 26th December, 2023, he submits that in respect of the self-same issue which forms subject matter of the show-cause for the tax period April, 2018 to March, 2019, the previous proceeding initiated vide a show-cause notice dated 30th August, 2023 as aforesaid had been dropped. By placing before this Court the judgment delivered by the Hon'ble Supreme Court in the case of ***M/s. Radhasoami Satsang, Saomi Bagh, Agra vs. Commissioner of Income Tax***, reported in **(1992) 1 SCC 659** he submits that if an issue had already been previously adjudicated, there is no scope to reopen the same though for a subsequent period unless, there is change in circumstances. According to Mr. Kanodia, the issue that fell for consideration in respect of discrepancies mentioned in Serial Nos. 3 and 4 of the order dated 26th December, 2023 for the tax period July, 2017 to March, 2018 are the same in respect of the determination made by the proper officer vide order dated 8th April, 2024 in respect of the tax period April, 2018 to March, 2019. He submits that in the facts noted hereinabove, this Court may be pleased to set aside the order or in the alternative remand the matter back to the proper officer for adjudication afresh having regard to the decision taken by the proper officer on 26th December, 2023 in respect of the tax period July, 2017 to March, 2018.

3. According to Mr. Kanodia, the petitioners were prevented from participating in the present proceeding before the proper officer since, the consultant engaged by the petitioners was ill he did not properly inform the petitioners with regard to the developments concerning the subsequent year and he also remained unreachable.

4. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the respondents submits that admittedly in this case the petitioners were served with a pre-show-cause notice in DRC-01A on 8th October, 2023, the petitioners did not respond to the same. Subsequently, a show-cause notice was issued on 5th December, 2023. The petitioners did not respond to the said show-cause as well. In the facts noted above, the proper officer had determined the liability. He submits that the petitioners have an efficacious alternative remedy in the form of an appeal before the appellate authority. Instead of availing such remedy, the petitioners have approached this Court and are attempting to adjudicate their case on merits which ordinarily is not permissible. He submits that in order to ascertain whether the present show-cause and the previous show-cause have been issued on the same footing, and in absence of any response being filed by the petitioners, a detailed scrutiny would be required. Having regard to the above it is submitted that no interference is called for.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case I notice that the petitioners are aggrieved by a determination made by the proper officer under the said act on 8th April, 2024. Records reveal that much prior to issuance of such order, on 8th October, 2023, the petitioners had been issued a notice in DRC-01A. The petitioners did not respond to such notice. Subsequently, a show-cause notice was issued in Form GST DRC-01 on 5th December, 2023. The petitioners also had not responded to the same. I find that it is the petitioners' case that the consultant who had been engaged by the petitioners and looking after the GST matter in the place of business at Kolkata was unwell and unreachable and as such the petitioners were unaware of the pre show-cause notice dated 8th October, 2023, and the show-cause notice dated 5th December, 2023. I, however, notice that on 26th December, 2023, an order for dropping of proceeding under Section 73 of the said Act for the tax period from July, 2017 to March, 2018 was passed. The same records that a show-cause notice dated 30th August, 2023 was duly responded to by the petitioners on 3rd December, 2023. The petitioners have, however, not disclosed the name of the consultant who had been engaged by the petitioners. No supporting documents to establish the alleged illness of the consultant had also been disclosed.

6. Having regard to the aforesaid and taking note of the response filed by the petitioners on 3rd December, 2023 in respect of the scrutiny period July, 2017 to March, 2018, it is difficult to accept the contention of the petitioners that the petitioners' consultant remained unreachable or was ill for reasons whereof, the petitioners were unaware with regard to the impugned show-cause notice dated 5th December, 2023. The petitioner no.1 is not a small business entity but a private limited company, having corporate entity. Thus, the petitioners cannot feign ignorance of the pre show-cause as well as the show-cause notice by contending that its consultant was unwell or remained unreachable. The petitioners having not responded to the pre-show-cause notice as well as the show-cause notice, there being no proper explanation for having not responded to the same and further taking note of the efficacious alternative remedy available to the petitioner in the form of an appeal under section 107 of the said Act, I am of the view that the petitioners are not entitled to invoke the extraordinary writ jurisdiction to this Court for adjudication of its case on merits on the basis of its stand taken for the first time before this Court.
7. This writ petition thus, cannot succeed and is accordingly dismissed. Dismissal of the aforesaid writ petition shall not stand in the way of the petitioners applying before the appellate authority if so advised.

8. I find that the order impugned had been passed on 8th April, 2024, the petitioners had filed the writ petition on 2nd July, 2024, that is within the time prescribed for preferring an appeal under Section 107 of the said Act. Having regard thereto if the petitioners apply before the appellate authority within a period of 15 days from date, the appellate authority having regard to the pendency of the writ petition before this Court shall hear out and dispose of the appeal on merits as expeditiously as possibly preferably within a period of eight weeks therefrom, subject to compliance of other formalities by the petitioners.
9. With the above observations and directions, the writ petition is disposed of.
10. There shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Raja Basu Chowdhury, J.)

Sws. M
A.R. (Court)