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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17002 of 2024

Poorva Engineering and Tools Private Limited
Versus
The State of West Bengal & Ors.

Mr. Srinjoy Das
Mr. Saroj Banerjee
Ms. Jui Jana
… For the petitioner.

Mr. Anirban Ray, Ld.GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal
… For the State.

1. Challenging, *inter alia*, the order dated 12th February, 2024, passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

2. Mr. Das, learned advocate appearing on behalf of the petitioner would submit that subsequent to receipt of the notice dated 22nd July, 2022, in respect of the tax period July, 2017 to March 2018, intimating the petitioner with regard to the discrepancies, the petitioner had duly made a voluntary deposit of Rs.1,51,257/- on 19th August, 2022 in Form GSTDRC-03. He submits that subsequently the proper officer had passed an order

under Section 73 of the said Act for the tax period July, 2017 to March, 2018 on 9th March, 2023. According to Mr. Das, the proper officer did not take into consideration the payments made by the petitioner and the order passed by the proper officer is also a non-speaking order which resulted in miscarriage of justice.

3. The petitioner, being aggrieved had filed an appeal before the appellate authority. Simultaneously, with the filing of the appeal the petitioner had made payment of Rs.11727/- towards pre-deposit apart from the payment made in Form GST DRC-03, on 28th August, 2023 to the extent of Rs.40,759/- and Rs.723/- aggregating Rs.53,209/-. The appellate authority, however, had rejected the appeal by its order dated 12th February, 2024, inter alia, by recording that the appeal had been rejected on the ground of delay in submission of the appeal.

4. He submits that he petitioner though has a statutory remedy in the form of an appeal before the Appellate Tribunal since, the Appellate Tribunal is yet to be constituted, the writ petition has been filed.

5. He prays that this Hon'ble Court may hear out the matter on merits or in the alternative remand the

matter to the appellate authority for a fresh decision on merits by condoning the delay in filing the appeal.

6. Mr. Sanyal, learned advocate appearing on behalf of the respondents on the other hand would submit that not only a notice was served on the petitioner intimating him as regards the discrepancies but subsequently a pre-show cause notice in Form GSTDRC-01A dated 30th January, 2023, as also a show-cause notice in Form GSTDRC-01 dated 9th March, 2023 both for the tax period July 2017 to March 2018, were served on the petitioner. Despite receipt of the aforesaid notices, the petitioner chose not to respond to the same. Having no other alternative, the proper officer had determined the liability for the aforesaid tax period.

7. According to Mr. Sanyal, although the petitioner had preferred an appeal, since the appeal was belatedly filed, the same was dismissed. He submits that the payments made by the petitioner are also not reflected in the appeal filed by the petitioner. The disclosure, as regards the payments is made for the first time before this Court and this Hon'ble Court ought not to enter into the merits of the case. He, however, acknowledges the fact that the

Appellate Tribunal under the said Act is yet to be constituted.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case a notice was served on the petitioner intimating him of the discrepancies. The petitioner had made a voluntary deposit of Rs.1,51,257/-. Subsequently, although a pre-show cause and show-cause notices were served on the petitioner, the petitioner did not respond to the same and the proper officer had determined the liability. Having regard to the same, it cannot be said that the proper officer committed any illegality in determining the liability. However on a closer scrutiny it appears that the order passed by the proper officer is a non-speaking order. Although, the petitioner alleges that he had made payments and in support thereof has annexed downloaded copies of Form GSTDRC-03 dated 19th August, 2022 and 28th August, 2023 in absence of determination by the appellate authority on merits the same were not taken into consideration at all. I find that the appellate authority had dismissed the appeal on the ground of delay.

9. The petitioner, however, has a statutory right of a

further appeal which the petitioner has been denied by reasons of the Appellate Tribunal not being constituted. To consider the petitioner's case on merits, as rightly pointed out by Mr. Sanyal, this Court would require to embark upon a detailed scrutiny of factual issues. In view thereof, and in the peculiar facts of the case, I remand the matter to the appellate authority by accepting the explanation given by the petitioner and on the prayer of Mr. Das, learned advocate for the petitioner, I condone the delay in preferring the appeal and direct the appellate authority to hear out and dispose of the same on merits as expeditiously as possible preferably within a period of 8 weeks from the date of communication of this order.

10. As a sequel thereto, the order dated 12th February, 2024, passed by the appellate authority stands set aside.

11. 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.)