18.09.2024
Item No.
DL 5
Saswata

W.P.A. 17255 of 2024

F Zone Unicom
versus
Assistant Commissioner of State Tax & Ors.

Mr. Debasis Kar
Mr. Abhijit Bose
Mr. Arka Tilok Bhadra
Ms. Jagori Mitra
...For the petitioner
Mr. A. Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. T. Chakraborty
Mr. S. Sanyal
...For the State
Ms. Smita Das De
...For the Union of India
Mr. Kaushik Dey
Ms. Ekta Sinha
...For the CGST
Mr. Vipul Kundalia
Ms. Aishwarya Rajyashree
...For the respondent no.5

1. In terms of the order dated 2nd September 2024 the respondents have produced the reasoned order passed under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period from 1st July 2017 to 31st March 2018.

2. Having heard the learned advocates appearing for the respective parties it appears that the order dated 31st October 2023 passed under Section 73 of the said Act, had been passed ex parte, and unopposed since, the petitioner failed to produce books of accounts or identify any discrepancies, the ITC found reversible on pro-rata basis was to be kept aside. Consequentially, the demand was confirmed as

was reflected in the show cause notice dated 13th July 2023.

3. It appears that although the petitioner had preferred an appeal before the appellate authority upon payment of pre deposit, as is required for maintaining the appeal, the same had been rejected on the ground of delay.

4. Considering the fact that at no stage, the order passed by the proper officer under Section 73 of the said Act had been tested out on merit, the same would be required to be tested for the first time on merit before this Court as the appellate tribunal is yet to be constituted, and since the same is likely to involve not only scrutiny of the records but also determination of factual issues, I am of the view that it would be prudent at this stage to remand the matter back to the appellate authority for re adjudication.

5. It is made clear that the aforesaid order is being passed by taking into consideration the fact that the entire demand raised by the respondents has already been realized and the payment made by the petitioner would also require to be factored in.

6. In view thereof, the order passed by the appellate authority dated 27th May, 2024 is set aside.

7. It is expected that the appellate authority shall hear out and dispose of the appeal on merit as expeditiously as possible, preferably within a period of

12 weeks from the date of communication of this order.

8. In view of the remand of the matter back to the appellate authority, the notice issued in Form GST DRC - 13 dated 14^{th} March 2024 appearing at page 25 of the writ petition stands quashed.

9. With the above observations and directions, the writ petition being WPA 17255 of 2024 is accordingly disposed of.

10. 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.*)