M/L 35
**03.09.2024**
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

**WPA 17418 of 2024**

A to Z Communication
Versus
The State of West Bengal & Ors.

Mr. Sutirtha Das
... For the petitioners.

Mr. Anirban Ray, Ld.GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
... For the State.

1. Affidavit of service filed in Court today is taken on record.

2. Challenging the order of rejection of the appeal dated 29th April, 2024, passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") which arose out of the adjudication order passed by the proper officer under Section 73(9) of the said Act dated 30th November, 2023, in respect of the tax period July, 2017 to March, 2018, the present writ petition has been filed.

3. Mr. Das, learned advocate appearing on behalf of the petitioner would submit that the proper officer by ignoring the payment made by the petitioner in

GSTDRC-03 dated 31st January, 2020 and by glossing over the response filed by the petitioner had passed the adjudication order. He submits that although the petitioner had filed an appeal before the appellate authority under Section 107 of the said Act and had made pre-deposit of RS.83,938/- in addition to the payment made in Form GST DRC 03 dated 5th February, 2024 to the tune of Rs.8,39,374/-, the appellate authority without taking note of the aforesaid payment had dismissed the appeal on the ground of delay in submission of appeal. He submits that independent of the aforesaid, the proper officer had caused to be debited a sum of Rs.8,39,372/- from the electronic credit ledger of the petitioner on 3rd April, 2024. This had also not been considered by the appellate authority. He submits that the petitioner, in fact, is entitled to refund of the amount realised, in excess of the demand raised by the respondents in GSTDRC 07 dated 30th November, 2023, for the tax period July, 2017 to March, 2018. According to him, although the petitioner has a right to prefer another statutory appeal before the Appellate Tribunal since, the Appellate Tribunal is yet to be constituted, the instant writ petition has been filed. He submits that this Hon’ble Court may be pleased to direct refund of the excess amount realized from the petitioner.

4. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents. He submits that the order passed by the proper officer on 30th November, 2023, cannot be said to be irregular since, there was no scope for the proper officer to take note of the voluntary payments made by the petitioner in Form GSTDRC - 03 on 5th February, 2024, since such payment was made subsequent to passing of the aforesaid order. He submits that if any amount has been realized from the petitioner by debiting the electronic credit ledger, and if any amount has been paid by the petitioner by way of voluntary deposit in Form GSTDRC 03, the respondents are obliged to give credit to the same. He, however, submits that the order passed by the appellate authority is in order. Admittedly, the petitioner had filed the appeal belatedly and as such there is no irregularity in the appellate order dismissing the appeal on the ground of delay.

5. Having heard the learned advocates appearing for the respective parties and taking note of the payments allegedly made by the petitioner, inter

alia, including recoveries from the electronic credit ledger, I am of the view that without embarking upon an enquiry so as to ascertain the correctness of the payments made and the amount realized from the petitioner, it would be prudent to remand the matter to the appellate authority in the peculiar facts of the case since, the same would require detailed computation and a thorough scrutiny of the records to ascertain whether the payments made by the petitioner pertain to the period for which the determination had been made.

6. In view thereof, the matter is remanded back to the appellate authority for a decision on merits. The appellate authority upon giving an opportunity of hearing to the petitioner and having regard to the observation made hereinabove, shall hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of six weeks from the date of communication of this order. In his order he shall specifically record reasons as regards the payments allegedly made by the petitioner in Form GSTDRC03 forming part of the writ petition and the realization of sum of Rs.8,39,372/- from the petitioner's electronic credit ledger effected on 3rd April, 2024.

7. If the appellate authority is of the view that any amount, in addition to the demand made in form GST DRC 07 dated 30th November, 2023 for the period July 2017 to March 2018 has been realized, he shall pass appropriate direction for refund of excess amount to the electronic credit ledger of the petitioner.

8. It is made clear that this Court has not gone into the merits of the matter it shall be open to the appellate authority to examine the matter on merits.

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

10. There shall be no order as to costs.

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.)**