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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17587 of 2024

RDB Rasayans Limited
Versus
The Additional Commissioner of Revenue & Ors.

Mr. Sanjay Dixit
Mr. Rajarshi Chatterjee
Mr. Rajeev Kumar Agarwal
Mr. Subhajit Nath
Mr. Siddharth Agarwal
Ms. Suman Sahani
... For the petitioner.

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

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

2. At the very outset Mr. Dixit, learned advocate appearing on behalf of the petitioner submits that he has instruction not to press prayer (b) of the writ petition.

3. The present writ petition has been filed, inter alia, challenging the order dated 29th February, 2024 passed by the appellate authority under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") in respect of the tax period July 2017 to March 2018.

4. Mr. Dixit, learned advocate appearing on behalf of the petitioner contends that some times in July, 2022 the petitioner was served with a notice in Form GST ASMT- 10 identifying certain discrepancies, inter alia, including short payment/excess availment of ITC. Although, the petitioner had through its authorized signatory responded to the said notice subsequently, however, by reasons of the primary authorized signatory who was looking after the matter having resigned, the petitioner lost sight of the matter and ultimately was made aware with regard to the disposal of a proceeding initiated under Section 73 of the said Act, in the month of November, 2023 when a sum of Rs.10,58,446/- was debited from the petitioner's electronic credit ledger on account of recovery of demand. Following the aforesaid, the petitioner had filed an appeal before the appellate authority. Simultaneously with the filing of the appeal the petitioner had made a pre-deposit of Rs.264001/- as was required for maintaining the appeal in addition to the recovery already made. Admittedly, the appeal was filed beyond the period of limitation. The appellate authority by its order dated 29th February, 2024 had rejected the said appeal on the ground of delay. He further submits that although the petitioner has a right to prefer an appeal before the Appellate Tribunal since,

the Appellate Tribunal is yet to be constituted, the instant writ petition has been filed. It is submitted that all along there has been no adjudication on merits. The order passed by the proper officer is also an *ex parte* order. Having regard thereto, it is submitted that unless the writ petition is heard on merits, the petitioner shall suffer irreparable loss. As such pending hearing of this writ petition he prays for stay of the demand raised by the respondents in Form GST DRC - 07 dated 13th April, 2023.

5. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State respondents submits that since admittedly, the appeal was filed beyond the prescribed period, the same has been rightly rejected by the appellate authority. He, however, acknowledges the fact that recovery/payments made by the petitioner requires to be reconciled since, there has been no adjudication on merits by the appellate authority.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case a determination has been made under Section 73 of the said Act in respect of the tax period July, 2017 to March, 2018 on 13th April, 2023. Subsequent thereto, a sum of Rs.10,58,446/- has been recovered from the petitioner.

Although, the petitioner may have reasons for filing of appeal belatedly, the fact remains, such appeal was rejected on the ground of delay. There has been no adjudication on merits by the appellate authority and as such the payments made by the petitioner towards pre-deposit and the recovery made, has also not been accounted for.

7. Taking note of the above and considering the fact that the petitioner may have been prevented from filing the appeal within the time prescribed by reasons of its authorized primary signatory resigning, however, without going into such issue it would be prudent to remand the matter back to the appellate authority, having regard to the fact that the Appellate Tribunal is yet to be constituted and reconsideration of the matter would require detailed scrutiny of the records and decision on factual issues.

8. In view thereof, in the peculiar facts, while remanding the matter back to the appellate authority, I direct the appellate authority to hear out and dispose of the appeal within a period of eight weeks from the date of communication of this order. Since, the appeal has been remanded back the consequence of Section 107(8) of the said Act shall follow in this case and the demand raised by the respondents in Form GST DRC -07 dated

13th April, 2023 for the tax period July, 2017 to March, 2018 shall remain stayed subject to final outcome of the appeal.

9. 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.)