

ML -63
04.09.2024
b.r./D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17838 of 2024

Ravi Taparia
Vs.
The union of India & Ors.

Mr. Himangshu Kumar Ray,
Mr. Piyas Chowdhury,
Ms. Shiwani Shaw,
Mr. Subhsish Poddar.
... for the petitioner

Mr. Anirban Ray, Id. G.P.,
Mr. T.M. Siddique,
Mr. T. Chakraborty,
Mr. S. Sanyal.
... for the State

Mr. Om Narayan Rai,
Mr. Prithu Dudhoria.
... for the Union of India

1. Affidavit-of-service filed in Court today is taken on record.
2. The present writ petition has been filed *inter alia*, challenging an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), dated 5th April, 2023.
3. The writ petition has been affirmed on 10th July, 2024, *inter alia*, by contending that the petitioner was not aware with regard to the order as the same was uploaded on the portal under the head of *Additional Notices and Order Section*.

4. Having heard the learned advocates for the respective parties and considered the materials on record, I find that the explanation for delay provided in the petition is found to be not satisfactory. Although, the petitioner has claimed that the proper officer despite being obliged to offer a personal hearing having not offered the same the adjudication order stands vitiated on such ground itself, I am of the view that the petitioner having not approached this Court within a reasonable period and the explanation for the delay not being satisfactory, is not entitled to question the adjudication order on the ground of violation of statutory provision and violation of principles of natural justice, by invoking the extraordinary jurisdiction of the Hon'ble Court especially when there is an alternative remedy in the form of appeal before the appellate authority under Section 107 of the said Act.
5. Admittedly, a determination has been made by passing an order under Section 73 of the said Act and by reason thereof, a demand in Form GST DRC – 07 amounting to Rs.1,00,71,613.09/- which includes interest and penalty as well has been raised. The petitioner has successfully avoided the said

order up to this date and it is also not the case of the petitioner that the pre show-cause in Form DRC – 01A or the show-cause in Form DRC – 01, had not been issued.

6. Having regard thereto, ordinarily there would be no scope to entertain this writ petition.
7. At this stage, Mr. Ray, learned advocate appearing on behalf of the petitioner prays for leave to prefer an appeal before the appellate authority, as in the alternative in the absence of the appellate tribunal being constituted the petitioner shall be rendered remediless.
8. Having considered such submissions and the fact that the appellate tribunal is yet to be constituted, leave is granted to the petitioner to prefer an appeal before the appellate authority subject to the petitioner making payment of Rs.5,00,000/- with the respondents on account of costs. If the amount is paid by the petitioner within a period of four weeks from date, the appellate authority having regard to the above and the facts of the case, shall hear out and dispose of the appeal on merits, subject to compliance of other formalities.
9. With the above observations and directions, the writ petition stands disposed of.

10. Urgent certified copy of this order, if applied for, be made over to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)