09.09.2024
Item No.
ML 60
Court No.5
Saswata

WPA 17803 of 2024
M/s Hajee A.P.Bava & Company Constructions Private Limited
Versus
The Assistant Commissioner of Revenue, Commercial Taxes, Midnapore Charge & Ors.

Mr. Rahul Pareshrampuria
Mr. Udit Agarwal
…For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
…For the State

1. Although, the petitioner seeks to challenge the order dated 5th December 2023 passed by the proper officer under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period July 2017 to March 2018 on the ground that such order had been passed without giving an opportunity of hearing to the petitioner, the learned advocate appearing for the petitioner submits that the aforesaid order passed by the respondents is contrary to the statutory provisions and as such cannot be sustained.

2. In response to a query of this Court he submits that the petitioner did not respond to the show cause notice issued under Section 73 of the said Act in Form GST DRC – 01 on 11th May, 2023, since the same was uploaded in the "*view additional notices*" tab.

3. Mr. Ray, learned Government Pleader submits that there is no explanation for the delay in filing the writ petition nor there is any statement in the writ petition that the original notice in Form GST DRC – 01A was uploaded in the "*view additional notices*" tab or that the petitioner remained unaware with regard to the same.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record.

5. Admittedly, in this case it may be noticed that the petitioner was given an opportunity to respond to the show cause notice, but the petitioner did not respond to the show cause notice at all. Although, the said Act contemplates offering an opportunity of hearing where an adverse order is contemplated, however, considering the fact that there is no explanation for the delay in filing the aforesaid writ petition and, further since, admittedly, the petitioner did not respond to the show cause notice, I am of the view that no case for interference in exercise of extra ordinary writ jurisdiction has been made out.

6. At this stage, the learned advocate appearing for the petitioner submits that liberty ought to be afforded to the petitioner to explain the delay. I find that since there is no statement in the instant writ petition as regards the show cause notice being uploaded in the *"view additional notices"* tab and contrary thereto since in paragraph 2(j) of the writ petition it has been stated that by reasons of the petitioner not filing any response to the show cause notice, the matter was adjudicated ex parte which has been affirmed as true to knowledge I find no reason to afford further opportunity to the petitioner, as the statements made in the petition cannot be permitted to be withdrawn, in the guise of filing supplementary affidavit. Further, taking note of the fact that the petitioner has an alternative forum in the form of an appeal, I am of the view that it is not necessary to entertain the instant writ petition.

7. At the same time taking note of the fact that the appellate tribunal under Section 112 of the said Act is yet to be constituted, I grant liberty to the petitioner to approach the appellate authority under Section 107 of the said Act, subject to the petitioner making a payment of Rs.50,000/- with the respondents. If such payment is made within a period of 2 weeks from date, the appellate authority, having regard thereto, shall hear out the appeal, by condoning the delay, on merit and shall dispose of the same as expeditiously as possible, preferably within a period of 12 weeks from the date of filing of the appeal, subject to compliance of other formalities by the petitioner.

8. With the above observations and directions, the writ petition being WPA 17803 of 2024 is ***disposed of***.

9. 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.*)