ML -58
04.09.2024
b.r./D. Hira
Ct No. 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17800 of 2024

Arati Constructions
Vs.
Superintendent of Central Tax, Range -1, Tollygunge Division, Kolkata South CGST & CX Commissionerate & Ors.

Mr. Parag Kothari.
... for the petitioner

Mr. Kaushik Dey,
Mr. A. Raha.
.. for the respondent Nos. 1, 2 & 3

Mr. Prabir Kumar Das,
Ms. Tapasi Sinha Palit.
... for the respondent no. 5

1. Challenging the adjudication order dated 24th April, 2024 passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act, for the tax period April 2018 to March 2019 the present writ petition has been filed.

2. The petitioner says that the proper officer without considering the petitioner's response, has passed the adjudication order. He also submits that several circulars have not been considered by the proper officer which he was otherwise obliged to consider. It is also claimed that the present proceeding ought to have proceeded under Section 74 of the said Act

and not under Section 73 of the said Act. The adjudication order is bad in law and cannot be sustained, the same should be set aside.

3. Mr. Dey, learned advocate appearing on behalf of the respondents submits that the petitioner has an alternative remedy in the form of an appeal and as such this Court ought not to entertain the present writ petition.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record. I am of the view since, an alternative remedy is available to the petitioner under Section 107 of the said Act, and since, there is no jurisdiction issue involved which goes to the root of the matter, further the petitioner having not been able to identify any procedural irregularity, there is no scope to admit the writ petition.

5. Challenge to an order on merits of the decision rendered by the adjudicating authority, in my view can more appropriately be adjudicated at the first instance by the Appellate Authority.

6. I find that the adjudication order has been passed on 24th April, 2024 and the present writ petition has been filed on 11th July, 2024,

that is within the prescribed period for preferring an appeal under Section 107 of the said Act.

7. Having regard thereto, if an appeal is filed before the Appellate Authority, within a period of three weeks from date, the Appellate Authority having due regard to the pendency of the writ petition before this Court shall hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of eight weeks from the date of communication of this order, subject to compliance of other formalities by the petitioner.

8. With the above observations and directions, the writ petition stands disposed of.

9. 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.)