ML 175 **13.09.24**
Ct. No.05
Sws.M

WPA 17881 of 2024

Sunil Mondal
Vs.
The State of West Bengal & Ors.

Mr. Bhaskar Sengupta

.....for the petitioner

Mr. A. Ray
Mr. T.M. Siddique
Mr. T. Chakraborty
Ms. S. Sanyal

...for the State

Challenging an order passed under Section 73 of the WBGST/CGST Act, 2017 (herein after referred to as the said Act) dated 3rd July, 2023 for the tax period April 2018 to March 2019 an appeal was filed before the appellate authority under Section 107 of the said Act. Simultaneously with the filing of the appeal, the petitioner had also made payment of the pre-deposit as is required for maintaining the appeal.

Admittedly, the appeal was barred by limitation and as such the petitioner filed an application praying for condonation of delay on medical ground. The appellate authority, however, by a cryptic order dated 15th May, 2024 had dismissed the said appeal on the ground "*delay in submission of appeal*".

Mr. Sengupta, learned advocate appearing on behalf of the petitioner would submit that the petitioner was unable to test out the adjudication order before the appellate authority since the same had been dismissed on the ground of delay.

Unfortunately, for the petitioner, the appellate tribunal has also not been constituted and as such the petitioner has been compelled to approach this Court. He submits that this Court may be pleased to take up the matter and test the same on merits or in the alternative remand the matter to the appellate authority.

Mr. Chakraborty, learned advocate appearing on behalf of the respondents would submit admittedly, there was a delay in preferring the above appeal. Having regard thereto the appellate authority did not commit any irregularity in rejecting the appeal. He, however, does not deny the fact that the appeal was filed along with the pre-deposit which is also requires to be accounted for.

Heard the learned advocates appearing for the respective parties and considered the materials on record. I may note to that an adjudication order has been passed under Section 73 of the said Act. The petitioner insists that the order be tested out at least once on merit. In order to test out the aforesaid order on merit, in my view not only scrutiny of the record but consideration of factual issues would also be necessary. Having regard thereto and taking note of the fact that the appellate tribunal is yet to be constituted. At this stage it would be prudent to remand the matter back to the appellate authority for adjudication on merits. Having regard thereto the order dated 15th May, 2024 is set aside. The matter is remanded back to the appellate authority. The appellate authority is directed to hear out and dispose of the appeal on merits as expeditiously as possible preferably within a period of 12 weeks from the date of communication of this order.

With the aforesaid observations, the writ petition is disposed of.

(Raja Basu Chowdhury, J)