M/L 71
05.09.2024
sb
Ct 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17897 of 2024

Sambhu Maji
Versus
Senior Joint Commissioner of Revenue,
State Tax, Behala Circle & Ors.

Mr. Prasenjit Burman
Ms. Payel Koley
Mr. Swapnesh Mallik
... For the petitioner.

Mr. A. Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... For the State.

1. Challenging the order passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") dated 11th October, 2023, in respect of the tax period July, 2017 to March, 2018, an appeal was filed before the appellate authority under Section 107 of the said Act on 7th March, 2024. Simultaneously, with the filing of the appeal, the petitioner had made pre-deposit of Rs.45,542/- as is required for maintaining the appeal. The petitioner contends that there was a delay of approximately 30 days beyond four months from the date of passing of the order. According to him, the delay was occasioned by reasons of his medical condition. It is submitted that in the adjudication order there has been no decision on merit before the appellate authority. Although the petitioner

has a right to prefer a statutory appeal before the Appellate Tribunal, since the Appellate Tribunal has not been constituted, the petitioner has been prevented from challenging the above order before the statutory authority and as such, the instant writ petition has been filed. He submits that this matter requires to be adjudicated on merits.

2. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the respondents would submit that the appeal was filed beyond the time prescribed and as such, there is no irregularity in the order passed by the appellate authority.

3. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that the petitioner questions the adjudication order. Although the statute recognizes two successive appellate forums, in the instant case, the petitioner has been denied the benefit of the subsequent appellate forum before the Appellate Tribunal since, the same is yet to be constituted. As such, there has been no decision on merits at the appellate stage. In order to decide the matter on merits, not only scrutiny of the records but a decision on factual issues would also be necessary.

4. Having regard to the above, I am of the view that the

matter is required to be remanded back to the appellate authority for a decision on merit, especially having regard to the fact that the Appellate Tribunal has not been constituted.

5. In view thereof, while condoning the delay I remanding the matter back to the appellate authority for a decision on merit. The order dated 27th May, 2024 is set aside with a further direction upon the appellate authority 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.

6. 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.)