M/L 112
10.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18425 of 2024

Anushree Madhogaria
Versus
The Assistant Commissioner of State Tax,
Howrah and Kadamtala Charge & Ors.

Mr. Akshat Agarwal
... For the petitioner.

Mr. Anriban Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Charkaborty
Ms. S. Shaw
Mr. Saptak Sanyal
... For the respondents .

1. Challenging the order passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act"), dated 27th February, 2023, for the tax period April, 2021 to March, 2022, an appeal was filed before the appellate authority under Section 107 of the said Act on 31st January, 2024. To avail the benefit of the Notification dated 2nd November, 2023, the petitioner had deposited a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order as pre-deposit, out of which twenty per cent was required to be paid by debiting the electronic cash ledger.

2. Mr. Agarwal, learned advocate appearing on behalf of the petitioner would submit that as per the said

Notification, in the event, a registered tax payer had failed to prefer an appeal from the order passed under Section 73/74 of the said Act on/or before 31st March, 2023, then in such event if such appeal was filed on/or before 31st January, 2024, along with pre-deposit of twelve and a half per cent of the amount of tax as admitted by him, in the manner provided in the aforesaid notification, the appellate authority was bound to consider the appeal on merits. In the instant case, since, by the time the petitioner had filed an appeal, the entire amount of the demand raised by the respondents in Form GSTDRC-07 had been realized, as would corroborate from the electronic credit ledger and since, the appeal was filed within the time stipulated in the above Notification, the appellate authority was bound to consider the same on merits. Unfortunately, by the order dated 30th May, 2024, the appellate authority had dismissed the appeal on the ground of limitation by glossing over the provisions contained in the Notification dated 2nd November, 2023. Having regard to the above, he submits that the aforesaid order cannot be sustained and the matter should be remanded back to the appellate authority for a decision afresh or in the alternative this Court may decide the matter on merits since, the Appellate Tribunal under the said Act is yet to be constituted.

3. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents. He does not dispute the fact that the entire demand raised by the respondents in Form GST DRC -07 has already been realized.

4. Having heard the learned advocates appearing for the respective parties and having considered the materials on record since, it appears that prior to the filing of the appeal, the respondents had already realized the sum in excess of twelve and a half per cent of the amount of tax in dispute, though the petitioner has claimed that the entirety thereof has been realized, without going into such issue at this stage, I am of the view, that the appellate authority ought to have taken a pragmatic view, though the conditions set forth in the said Notification may not have been strictly fulfilled, especially having regard to the fact that the appellate tribunal is yet to be constituted.

5. Having regard thereto, the matter is remanded back to the appellate authority for a decision on merits. The appellate authority is directed to hear out and dispose of the appeal as expeditiously as possible,

preferably within a period of eight weeks from the date of communication of this order upon giving an opportunity of personal hearing to the petitioner.

6. As a sequel thereto, the order passed by the appellate authority on 30th May, 2024 is set aside.

7. It is made clear that the matter shall not be dealt with by the same officer, who had passed the order, which forms the subject matter of challenge.

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

9. 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.)