27.08.2024
Item No.
AD 12
Saswata

W.P.A. 18535 of 2024

Basanti Medical Stores & Anr.
versus
The State of West Bengal & Ors.

Mr. Himangshu Kr. Ray

...For the petitioners

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.

2. The instant writ petition has been filed, inter alia, challenging the steps taken by the respondents pursuant to an order of rectification dated 2nd May 2024. It is the petitioners' case that a determination was made on 7th December 2023 under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") in respect of the tax period from July 2017 to March 2018. The petitioners had, thereafter, applied for rectification by an application dated 6th January 2024. Such rectification application was disposed of by an order dated 2nd May 2024. Subsequently, the WBGST authorities had proceeded to enforce their demand issued in Form GST DRC – 07 dated 7th December 2023 and had accordingly issued the Form GST DRC – 13, thereby attaching the petitioners' bank account maintained with the Bank of Boroda, Raiganj Branch.

3. Mr. Ray, learned advocate appearing for the petitioners would submit that even prior to attaching the

petitioners' bank account, a sum of Rs.88,635/- had been recovered from the petitioners' Electronic Cash Ledger, on 4th June, 2024, which according to him constitutes 43 per cent of the demanded tax. He submits that the aforesaid recovery is irregular as the respondents proceeded to recover the said amount even before the period of expiry of filing of the appeal. He further submits that the time to file an appeal from the order dated 2nd May 2024 had only expired on 2nd August 2024. In view thereof, he submits that this Hon'ble Court may be pleased to direct the respondents to refund the amount which had been illegally recovered from the petitioners.

4. Mr. Ray, learned Government Pleader enters appearance on behalf of the State GST authorities.

5. Having heard the learned advocates appearing for the respective parties and having ascertained that the petitioners, till date, have not preferred any appeal from the order passed under Section 73 of the said Act, in respect whereof, the petitioners had sought for rectification which was turned down by order dated 2nd May 2024, I am of the view that the petitioners cannot be permitted to challenge the aforesaid order dated 7th December, 2023 or the order dated 2nd May, 2024, before this Court by invoking the extra ordinary writ jurisdiction, especially when there is an efficacious alternate remedy available to the petitioners.

6. It appears that the present writ petition was filed on 19th July 2024. Having regard thereto, I permit the petitioners to approach the appellate authority. In the event, the petitioners approach the appellate authority within a period of 15 days from date, the appellate

authority, having regard to the pendency of the writ petition before this Court, shall condone the delay and hear out the appeal on merits within a period of 8 weeks from the date of filing of the appeal. The appellate authority shall take note of the recovery already made from the petitioners and if it is found that the sum in excess of 10 per cent of the tax in dispute has already been recovered, the appellate authority shall not insist for any further pre deposit.

7. In the event, the appeal is filed within the time prescribed hereinabove, and if it is found that 10 per cent of the tax in dispute has already been recovered from the petitioner or in the alternative if the above amount is deposited as pre-deposit along with the appeal, having regard to the provisions contained under Section 107(7) of the said Act, the orders which shall form subject matter of challenge before the appellate authority, shall be deemed to be stayed and consequentially, the order of attachment of the petitioners' bank account issued in Form GST DRC – 13 dated 25th June, 2024 shall not be given further effect.

8. With the above directions and observations, the writ petition being WPA 18535 of 2024 is accordingly 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.*)