19th September, 2024
(AK)
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W.P.A 19245 of 2024

Kamal Krishna Kundu
Vs.
The State of West Bengal and others

Mr. S. Seal
Mr. Bhaskar Sengupta
…for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddqui
Mr. Tanoy Chakraborty
Ms. S. Shaw
Mr. Saptak Sanyal
…for the State.

1. The petitioner challenges the order dated 18th January, 2024 passed by the Appellate Authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act').

2. The petitioner would submit that although the petitioner had filed the aforesaid appeal by invoking the notification dated 2nd November, 2023 and had paid twelve and half per cent of the tax in dispute in addition to the recovery already made by the respondents, however, since according to the respondents, the petitioner did not make payment of twenty five per cent of the aforesaid amount by debiting his electrical cash ledger, the appeal has been dismissed.

3. Mr. Seal, learned Advocate appearing on behalf of the petitioner, would submit that since the entire amount of the tax in dispute as reflected in Form DRC 07 dated 21st June, 2021 had been realised the Appellate Authority ought not to have insisted for payment of any other additional amount. He would also submit that an attachment order has also been issued in Form DRC 13 dated 15th September, 2022. In the facts noted hereinabove, he submits that this Hon'ble Court may be pleased to hear out the matter on merits since the recovery made from the petitioner, *inter alia*, including the payments made has not been accounted for as there has been no decision on merits.

4. Mr. Chakraborty, learned Advocate appearing on behalf of the State-respondents, on the other hand, submits that certain recoveries had been made though the exact quantum of recovery is not readily available with him. He acknowledges the fact that the recovery made from the petitioner, inter alia, including the payment of voluntary-deposit if any is required to be reconciled, as there is no reflection in the appellate order.

5. Having heard the learned Advocates appearing on behalf of the respective parties and taking note of the fact that substantial recovery may have been made from the petitioner, prior to passing of the

order of rejection of the appeal on 18th January, 2024, I am of the view that the Appellate Authority ought to have considered the appeal on merits though, there may not have been strict compliance of the notification dated 2nd November, 2023.

6. In view of the peculiar facts of this case and also noting that the appellate tribunal is yet to be constituted, I remand the matter back to the Appellate Authority for re-adjudication on merits. The Appellate Authority is directed to hear out and dispose of the appeal as expeditiously as possible preferably within a period of twelve weeks from the date of communication of this order.

7. Having regard to the order of remand, the notice issued in Form GST DRC 13 dated 15th September, 2022 stands quashed.

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

9. There shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)