18.09.2024
Item No.
ML 167
Saswata

W.P.A. 19218 of 2024

Ambika Sarees Private Limited
versus
Deputy Commissioner of Revenue, State Tax, Park Street Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
...For the petitioner
Mr. A. Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. T. Chakraborty
Ms. S. Shaw
Mr. S. Sanyal
...For the State

1. The present writ petition has been filed, inter alia, challenging the order of rejection of the appeal filed under Section 107 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") dated 5th February 2024, on the ground of delay in submission of the appeal.

2. It is the petitioner's case that being aggrieved by an adjudication order passed under Section 73 of the said Act dated 3rd July 2023 for the tax period from July 2017 to March 2018, an appeal was filed before the appellate authority along with the pre deposit as is required for maintaining an appeal. Admittedly, the appeal was barred by limitation. As such, while noting down the facts of the case in annexure-1 of the said appeal, the petitioner had explained the delay. Without considering such explanation, the appellate authority had rejected the appeal.

3. Mr. Choraria, learned advocate appearing for the petitioner submits that since the notice in Form GST DRC – 01 dated 28th May 2023 and the subsequent intimation was uploaded in the "*additional notice*" tab of the portal, the petitioner was unaware with regard to the same and as such, could not respond to the same. He submits that the petitioner was all along in the dark as regards the determination made under Section 73 of the said Act, since the order passed under Section 73 of the said Act and the demand raised in Form GST DRC - 07 dated 3rd July 2023 were uploaded in the *"additional notice"* tab of the portal. It is further submitted that on one hand, the petitioner has been prevented from appropriately responding to the show cause notice and on the other hand, the appellate authority had rejected the appeal without entering into the merits of the case. The aforesaid has caused serious prejudice to the petitioner.

4. By placing reliance on the circular dated 11th July 2024 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Tax & Customs, GST Policy Wing, Mr. Choraria submits that in terms of the aforesaid notice, ordinarily if the petitioner had filed an undertaking before the jurisdictional officer that the petitioner shall file an appeal before the appellate authority, then the

entire recovery thereunder which is to form subject matter of appeal before the tribunal is required to be stayed till such time, the appellate tribunal is constituted. In the instant case, the respondents had already realized 80 per cent of the amount of tax in dispute from the petitioner and as such, there cannot be any embargo in hearing the matter on merit given the peculiar facts. He submits that the petitioner has been compelled to approach this Court since the appellate tribunal is yet to be constituted.

5. Mr. Siddiqui, learned Additional Government Pleader, on the other hand submits that in the instant case, the petitioner has chosen to file a second appeal from the self-same order, despite the fact that the previous appeal filed by the petitioner had been rejected. He says that the order passed by the appellate authority cannot be said to be irregular since admittedly, the appeal was filed beyond the time prescribed.

6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record and taking note of the fact that recovery to the extent of 80 per cent of the amount of tax in dispute has already been effected and also taking note of the fact that the petitioner may not have got adequate opportunity to place its case before the proper officer and there being no contested decision on merit, I

am of the view that it would be prudent at this stage to remand the matter back to the appellate authority.

7. In view of thereof, the order passed by the appellate authority on 5th February 2024 is set aside and the matter is remanded back to the appellate authority for reconsideration on merit. The subsequent appeal filed by the petitioner under Section 107 of the said Act which culminated in the order dated 21st May 2024, in my view, is an appeal which was non-starter as there is no provision in the said Act to file a subsequent appeal, subsequent to the dismissal of an appeal under Section 107 of the said Act before the self-same authority. As such there is no impedement in avoid such an order.

8. The appellate authority is directed to dispose of the appeal as expeditiously as possible, preferably within a period of 12 weeks from the date of communication of this order.

9. With the above observations and directions, the writ petition being WPA 19218 of 2024 is accordingly disposed of.

10. 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.*)