18th September, 2024
(AK)
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W.P.A 19219 of 2024

Arihant International Ltd.
Vs.
Deputy Commissioner of State Tax, Budge Budge Charge and others

Mr. Sandip Choraria
Mr. Rishav Manna
...for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State.

1. Challenging, *inter alia*, an order dated 9th June, 2023 passed under Section 73(9) of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') the instant writ petition has been filed.

2. Mr. Choraria, learned Advocate appearing on behalf of the petitioner, would submit that the petitioner's registration under the said Act has also been cancelled by an order dated 27th June, 2023 with effect from 1st July, 2017. Being aggrieved with the order of cancellation, an appeal has been preferred before the Appellate Authority under Section 107 of the said Act which is pending. He submits that although at all material times there was substantial carry forward credit in the petitioner's credit ledger which remained unutilized, the petitioner had been

saddled not only with interest but also penalty. According to him, the levy of interest and penalty in like situation is *de hors* the scheme of the Act. He submits that in the facts noted hereinabove the order passed by the proper officer dated 9th June, 2023 for the tax period 2017-18 cannot be sustained and the order impugned should be set aside and remanded back for readjudication.

3. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State, on the other hand, would submit that the petitioner has an alternative remedy in the form of an appeal. Instead of approaching the Appellate Authority under Section 107 of the said Act, the instant writ petition has been filed.

4. In response, Mr. Choraria submits that since the petitioner's registration under the said Act has been cancelled, the petitioner is unable to file an appeal on the portal, before the Appellate Authority.

5. Having heard the learned Advocates appearing for the respective parties and having considered the materials on record and taking note of the fact that an appellate remedy is otherwise available to the petitioner, I am of the view that the petitioner ought to have at the first instance approached the Appellate Authority under Section 107 of the said Act.

6. As to whether the petitioner can be saddled with interest and penalty having regard to the claim filed by the petitioner that the petitioner had carry forward credit available in its credit ledger is a question of fact which requires to be decided by the appellate authority.
7. In view thereof, in the event the petitioner pays Rs.50,000/- towards costs to the respondents, within a period of four weeks from the date and files an appeal within the aforesaid period and presents the receipt of payment of costs to the Appellate Authority, the Appellate Authority having regard to the peculiar facts of this case shall hear out and dispose of the appeal on merits as expeditiously as possible, preferably within a period of twelve weeks from the date of communication of this order.
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.)