19.09.2024
Item No.
ML 193
Saswata

W.P.A. 19389 of 2024

Sailesh Kumar Gupta
versus
Assistant Commissioner of State Tax, Chandni Chawk and Princep 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
Mr. S. Sanyal
Mr. D. Sahu
...For the State

Ms. Smita Das De
... For the UOI

1. The petitioner is aggrieved by the fact that the petitioner has not been provided with an opportunity of hearing in terms of Section 75(4) of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") in relation to adjudicating of a show cause notice issued under Section 73 of the said Act. Admittedly, the show cause notice was issued on 28th December 2023. The petitioner had responded to the said notice. The adjudication order was passed on 23rd April 2024. Although, the petitioner complains of violation of the provisions of Section 75 (4) of the said Act in not providing opportunity of hearing to the petitioner, I find that the present writ petition has been filed on 31st July 2024, i.e., more than 3 months after the order was passed under Section 73 of the said Act. There is

no proper explanation as regards the delay in approaching this Court.

2. Though, Mr. Choraria, learned advocate appearing for the petitioner submits that the present writ petition has been filed within the outer time limit as specified for filing of an appeal, admittedly, it may be noted that the order impugned is an appealable order.

3. Having heard the learned advocates appearing for the respective parties and taking note of the fact that the impugned order is an appealable order, I am of the view that the petitioner has an efficacious alternative remedy in the form of an appeal. Though, the petitioner complains of violation of the statutory provisions, I find that the petitioner did not approach this Court immediately after passing of the aforesaid order. As such, the petitioner cannot be permitted to question the order on the ground of violation of the provisions contained under Section 75(4) of the said Act by invoking the extraordinary remedy available. If the petitioner was so eager to enforce his right by invoking the extraordinary remedy, he ought to have immediately approach this Court upon the order impugned being passed. Having waited for more than 3 months, the petitioner should not be permitted to have his grievance adjudicated by invoking the extra ordinary jurisdiction of this Court.

4. At the same time, I am of the view that the petitioner cannot be rendered remediless. During pendency of the writ petition, time to file the appeal has expired. Having regard thereto, I permit the petitioner to approach the appellate authority. In the event, the petitioner approaches the appellate authority within a period of 3 weeks from date, the appellate authority, having regard to the peculiar facts of this case, shall hear out and dispose of the appeal as expeditiously as possible, preferably within a period of 12 weeks from the date of filing of the appeal, subject to compliance of other formalities by the petitioner.

5. With the above observations and directions, the writ petition being WPA 19389 of 2024 is disposed of.

6. 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.*)