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19.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19545 of 2024

Amirul Islam
Versus
The State of West Bengal & Ors.

Ms. Mou Saha
... For the petitioner.

Mr. Anirban Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
... For the State

1. The present writ petition has been filed, inter alia, challenging the order dated 3rd April, 2024 passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act")

2. Ms. Saha, learned advocate appearing on behalf of the petitioner would submit that though the petitioner had made payment of the pre-deposit as is required for maintaining the appeal through Form GST DRC 03, the appellate authority had purported to reject the appeal by ignoring the payment made.

3. By drawing attention of this Court to the Form GSTDRC 03 dated 13th March, 2024, she would submit that 10 per cent of the pre-deposit amount had been paid through such form, as would corroborate from the recording made in column no. 8, thereof.

4. Mr. Sanyal, learned advocate appearing on behalf of the respondents on the other hand would submit that the petitioner in order to maintain an appeal would be required to make payment of 10 per cent of the entire tax in dispute as pre-deposit, apart from the admitted tax required to be paid by the petitioner. Since, the petitioner questions the entire order, the petitioner would be required to make payment of 10 per cent of the total tax component aggregating Rs.4,13,925/-. Admittedly, since there was a short-fall in payment of pre-deposit, the appeal had been dismissed.

5. At this stage, Ms. Saha, would submit that the petitioner at all material point of time was ready and willing to make payment of pre-deposit including the short-fall. She submits that the petitioner should be afforded with another opportunity to make payment of such short-fall.

6. Having heard the learned advocates appearing for the respective parties and upon ascertaining from the petitioner's advocate that the petitioner is ready and willing to make payment of the balance amount of the pre-deposit for maintaining the appeal and taking note of the fact that the Appellate Tribunal is yet to be constituted, I am of the view that in the event, the petitioner deposits the balance amount of pre-deposit aggregating 10 per cent of the amount of tax in dispute

in respect of the order which is appealed against, within a period of four weeks from the date of receipt of server copy of the order, the appellate authority having regard to such payment and the peculiar facts as noted hereinabove shall hear out and dispose of the same on merits as expeditiously as possible preferably within a period of 12 weeks from the date of communication of this order.

7. With the above observations and directions, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)