M/L 235
23.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20172 of 2024

Suklal Hembram
Versus
The State of West Bengal & Ors.

Mr. Arijit Chakraborty
Ms. Pallavi Ray
... 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. Challenging the order passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act"), dated 31st May, 2024, the instant writ petition has been filed.

2. Mr. Chakraborty, learned advocate appearing on behalf of the petitioner by placing before this Court the show cause notice issued under Section 73 of the said Act, dated 10th April, 2023, for the tax period April, 2021 to March, 2022, would submit that the petitioner was asked to show cause for having claimed Input Tax Credit (ITC) in excess than it was auto-populated in his GSTR-2A for the period April, 2021 to March, 2022. Accordingly, he was called upon to show cause as to why ITC shall not be disallowed under Section 16(2)(c)

and 16(4) of the said Act. He would submit although the petitioner had preferred an appeal before the appellate authority upon payment of pre-deposit as is required for maintaining the appeal, though such appeal was accompanied with an application for condonation of delay (via e-mail), the appellate authority without appropriately considering the same had purported to reject the appeal on the ground of delay in filing such appeal.

3. It is submitted that though the petitioner is entitled to challenge the aforesaid order before the Appellate Tribunal, since, the Appellate Tribunal is yet to be constituted, the instant writ petition has been filed. He submits that the instant writ petition may be taken up for consideration on merits and be disposed of.

4. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the State respondents.

5. Heard the learned advocates appearing for the respective parties and taking note of the fact that the Appellate Tribunal is yet to be constituted, I am of the view that the petitioner is entitled to maintain the writ petition before this Court. Taking note of the case made out, I am of the view that the writ petition requires consideration on merits. However, taking into consideration the fact that the disposal of the writ

petition on merits would require not only scrutiny of records but a decision of factual issues, I am of the view that it would be prudent, at this stage, to remand the matter before the appellate authority, especially having regard to the fact that the Appellate Tribunal is yet to be constituted.

6. In view thereof, the order dated 31st May, 2024, passed by the appellate authority under Section 107 of the said Act is set aside. The appeal is remanded to the appellate authority for a decision on merits.

7. The appellate authority is directed to hear out and dispose of the appeal as expeditiously as possible, preferably within a period of sixteen weeks from the date of communication of this order.

8. However, at the same time, considering the fact that there had been a delay of 120 days, in preferring the appeal I direct the petitioner to make payment of Rs.10,000/- with the State respondents towards costs within a period of two weeks from date.

9. Upon production of the receipt, as regards payment of costs, the appellate authority shall hear out and dispose of the matter in the manner as directed hereinabove.

10. 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.)