

M/L 238
25.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20282 of 2024

Naveen Oil Carrier Pvt. Ltd.
Versus
Assistant Commissioner of Revenue,
Bureau of Investigation (North Bengal) & Ors.

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

Mr. Aniarban Ray, Ld. GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Ms. S. Shaw
Mr. D. Sahu
... For the State.

1. Being aggrieved by the orders dated 23rd/24th February, 2023 issued under Section 129(3) of the WBGST/CGST Act, 2017 (hereinafter referred to as the “said Act”) in Form GST DRC 07, five several appeals were filed before the appellate authority under Section 107 of the said Act.
2. The petitioner had filed the appeals manually as the orders and the demands in Form GST DRC 07 were not uploaded on the petitioner’s portal. The petitioner claims to be a seller of goods which had been intercepted and detained. The appellate authority, however, by its order dated 9th October, 2023, which is impugned in the present writ petition, by relying on Rule 108 of the

WBGST/CGST Rules 2017 (hereinafter referred to as the “said Rule”) as was prevalent at that time of filing of the appeal was, inter alia, pleased to reject the same, by holding that the appeals were barred by limitation.

3. Mr. Choraria, learned advocate appearing on behalf of the petitioner would submit that once the appellate authority had arrived at a finding that the appeals were not in order by reasons of the same being filed manually, the same ought not to have been rejected on any other ground. By placing before this Court the provisions of Rule 108 of the said Rule he would submit that with effect from 4th August, 2023 the said Rule has been amended which authorizes the aggrieved person to file the appeal manually along with relevant documents in case the same cannot be filed electronically due to non-availability of the same. He submits that the petitioner is covered by the aforesaid scenario and the benefit of the amendment should be extended to the petitioner and the petitioner should have been permitted to maintain the appeals especially, having regard to the fact that the Appellate Tribunal under the said Act is yet to be constituted.

4. Mr. Siddiqui, learned Additional Government

Pleader enters appearance on behalf of the respondents.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, it would appear that admittedly the orders passed under Section 129(3) of the said Act were not uploaded in the petitioner's portal. The petitioner, however, claims to be aggrieved by such orders. As such, the petitioner in my view, was prevented from preferring the appeals electronically. Having considered the 1st proviso to Rule 108(1) of the said Rules, although it appears that an amendment had been introduced in the rule to take into consideration an identical issue of this nature where the order under appeal had not been uploaded electronically and or is not available, yet it would transpire that when the appeals were filed the amendment to Rule 108 had not been given effect and the 1st proviso was introduced on 4th August, 2023 i.e., subsequent to filing of the appeals, to that extent, the appellate authority cannot be faulted. However, since the amendment had already been introduced as on the date when the order impugned was passed, in my view, the appellate authority ought to have taken into consideration the subsequent development that the petitioner was

unable to file the appeals electronically as the orders were not uploaded on his portal and in absence thereof, he had thereby been prevented from filing the appeals electronically. In this regard the order passed by the appellate authority appears to be a mechanical one. There is, however, no dispute that the petitioner has a right to maintain the appeals.

6. In view thereof, the order passed by the appellate authority cannot be sustained and is set aside. The appeals are restored and the matter is remanded back to the appellate authority. The appellate authority shall hear out and dispose of the appeals on merits within a period of eight weeks from the date of communication of this order, subject to compliance of other formalities by the petitioner.
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.)