

24th September,
2024
(AK)
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W.P.A 20326 of 2024

Shyamal Kar
Vs.
The State of West Bengal and others

Mrs. Rita Mukherjee
Mr. Ghanshyam Jha

...for the petitioner.

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

...for the State.

1. Affidavit-of-service filed in court today be kept on record.
2. Challenging an order passed under Section 74 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 22nd May, 2024 in respect of the tax period December 2017 to January 2018 the instant writ petition has been filed.
3. Ms. Mukherjee, learned Advocate appearing on behalf of the petitioner, by placing before this court the show cause notice, the response filed by the petitioner and the order impugned would submit that the proper officer without due consideration of the petitioner's response had rejected petitioner's contention and made the determination. The aforesaid order stands vitiated on such ground. She submits that this court may be pleased to set aside

the order and remand the matter back to the proper officer for re-adjudication, having regard to the contentions raised by the petitioner in the instant writ petition.

4. Mr. Sannyal, learned Advocate appearing on behalf of the State-respondents, on the other hand, submits that the petitioner has an alternative efficacious remedy in the form of an appeal. He submits that at this stage this Hon'ble Court ought not to entertain the writ petition.
5. Having heard the learned Advocates appearing on behalf of the respective parties and taking note of the fact that the petitioner has an efficacious alternative remedy in the form of an appeal and since to decide the issues involved in the writ petition this Court would be required to go into factual aspects, I am of the view that since an efficacious remedy is available, the petitioner should first exhaust the same.
6. In view thereof the writ petition is not entertained.
7. The dismissal of the aforesaid petition shall not stand in the way of the petitioner approaching the appellate authority. The order impugned has been passed on 25th May, 2024, having regard thereto and the pendency of the writ petition, I permit the petitioner to approach the Appellate Authority within a period of four weeks from date.

8. In the event the petitioner files the appeal within the aforesaid period, the Appellate Authority under Section 107 of the said Act, having due regard to the above shall hear out and dispose of the appeal in accordance with law on merits as expeditiously as possible preferably within a period of twelve weeks from the date of filing such appeal subject to the petitioner complying with other formalities.
9. With the aforesaid directions and observations, writ petition stands disposed of.
10. There shall be no order as to costs.
11. 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.)