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24.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20498 of 2024

Mishra Auto Parts
Versus
The State of West Bengal & Ors.

Mr. Srinjoy Das
Ms. Jui Jana
Mr. Saroj Banerjee
... For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. S. Sanyal
Mr. D. Sahu
... For the State

1. Challenging an order passed under Section 73 of the CGST / WBGST Act, 2017 (hereinafter referred to as the "said Act") dated 17th January 2024 for the tax period from April 2018 to March 2019, an appeal was filed before the appellate authority under Section 107 of the said Act. Simultaneously, with the filing of the appeal the petitioner had also made the pre-deposit as is required for maintaining an appeal. Admittedly, the appeal was filed beyond the time prescribed. There appears to be some explanation given by the petitioner as regards the delay. The appellate authority, however, by its order dated 2nd August 2024 had rejected the appeal on the ground of "*delay in submission of appeal*" .

2. Mr. Das, learned advocate appearing for the

petitioner submits that the proper officer, at the first instance did not take note of the payment made by the petitioner in Form GSTR – 3B. By placing before this Court a print out of the comparison chart downloaded from the common portal appearing at page 38 of the instant writ petition, he submits that during the year 2018-19 the petitioner had shown tax liability in Form GSTR – 1 to be Rs.24,35,320.82/- and in discharge of such liability, the payment made by the petitioner was reflected in GSTR – 3B as Rs.39,72,878/-. It is submitted that from the above it would transpire that the total sum of Rs.15,35,557.18/- is found to be paid in excess and is available to the credit of the petitioner. He submits that the petitioner had, however, claimed Input Tax Credit in excess of its entitlement and as per the Form GSTR – 3B, the figure recorded is Rs.38,48,423/-, though the Input Tax Credit available in GSTR – 2A was only Rs.23,20,628.98/-.

3. According to the petitioner, though, the short fall on account of excess Input Tax Credit availed and utilized is Rs.15,27,794.02/-, if the amount of short fall in excess of the Input Tax Credit available is taken into consideration and a comparison is made with the amount available in the positive balance as per Form GSTR – 3B, it would appear that the petitioner has excess amount to its credit. This aspect was not appropriately considered by

the proper officer.

4. Mr. Das submits that ordinarily though the petitioner was entitled to have the same adjudicated by the appellate tribunal, since the appellate tribunal is yet to be constituted, this Court may decide such issue.

5. Mr. Sanyal, one of the learned advocates appearing for the State respondents does not dispute the fact that the print out appearing at page 38 of the instant writ petition is from the common portal. Insofar as the facts and figures are concerned, he submits that an adequate enquiry is necessary.

6. Having heard the learned advocates appearing for the respective parties and taking into consideration the facts available on record, inter alia, including the disclosure made by the petitioner in the form of tax liability and the Input Tax Credit comparison chart downloaded from the common portal generated on 2nd August 2024, I am of the view that the matter requires reconsideration on merit.

7. Admittedly, in this case the appellate authority did not consider the case on merit and had dismissed the appeal on the ground of delay. Having regard to the aforesaid, in this case it would be prudent at this stage to remand the matter back to the appellate authority with a further direction to the appellate authority to reconsider the matter in the light of the

observations made hereinabove. It is expected that the appellate authority having due regard to the direction issued hereinabove, shall hear out and dispose of the appeal in accordance with law upon giving an opportunity of hearing to the petitioner, preferably within a period of 12 weeks from the date of communication of this order.

8. As a sequel thereto, the order passed by the appellate authority dated 2^{nd} August 2024 is set aside.

9. With the above observations and directions, the writ petition being WPA 20498 of 2024 is disposed of.

10. 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.)