24th September,
2024
(AK)
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W.P.A 20717 of 2024

Remedy Vinimay Private Limited
Vs.
State of West Bengal and others

Mr. Anil Kumar
Mr. Rajarshi Chatterjee
...for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddqui
Mr. Tanoy Chakraborty
Ms. S. Shaw
Mr. Saptak Sanyal
...for the State.

1. Challenging an appellate order passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 29th May, 2024 the instant writ petition has been filed.
2. Mr. Anil Kumar, learned Advocate appearing on behalf of the petitioner, would submit that the petitioner had all good intentions to make payment of pre-deposit, however, since the pre-deposit was not paid the appeal stood rejected by an order dated 29th May, 2024. He submits that the petitioner is ready and willing to comply with the provisions as regards pre-deposit, this Hon'ble Court having regard to non-availability of the appellate tribunal may be pleased to remand the

matter back to the Appellate Authority or in the alternative hear out the matter on merits.

3. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State-respondents, would, however, submit that the petitioner despite filing the appeal chose not to make payment of the pre-deposit, which resulted in rejection of the appeal. In fact, despite service of a show cause notice the petitioner did not take any steps for making payment of the pre-deposit. In the facts as noted hereinabove, he submits that no interference is called for.

4. Having heard the learned Advocates appearing on behalf of the respective parties and having considered the materials on record, I find that admittedly in this case the petitioner did not make payment of the pre-deposit as is required for maintaining the appeal. As a consequence of the above, the appeal stood dismissed.

5. I may note that though the petitioner has a further remedy before the appellate tribunal, since the appellate tribunal is yet to be constituted the instant writ petition has been filed.

6. Taking note of the non-availability of the tribunal and having regard to the submission made on behalf of the petitioner that the petitioner is ready and willing to make payment of pre-deposit, I am of

the view instead of hearing out the matter on merit it would be prudent at this stage to remand the matter back to the Appellate Authority.

7. In view thereof though ordinarily, to maintain an appeal the petitioner is required to pay 10 per cent of the amount of tax in dispute as pre-deposit, in the instant case since, the appeal was dismissed by reasons of non-payment of pre-deposit, I direct the petitioner to make payment of additional 10 per cent of the amount of tax in dispute in addition to the pre-deposit of 10 per cent of the tax in dispute, as is required for maintaining the appeal.

8. In the event the petitioner makes payment of the aforesaid amount with the respondents through electronic cash ledger/credit ledger within a period of two weeks from date, the Appellate Authority upon ascertaining the factum of payment made by the petitioner shall hear out and dispose of the appeal on merits in accordance with law as expeditiously as possible preferably, within a period of twelve weeks from the date of communication of this order.

9. The additional payment of 10 per cent to be made by the petitioner in terms of this aforesaid order shall be treated as an additional pre-deposit and shall abide by the result of the appeal.

10. With the aforesaid directions and observations, writ petition stands disposed of.

11. There shall be no order as to costs.

12. 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.)