24th September, 2024
(AK)
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W.P.A 20726 of 2024

M/s. Roy Constructions
Vs.
Union of India and others

Ms. Malabika Roy Dey
…for the petitioner.

Md. T.M. Siddqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
…for the State.

1. Challenging an adjudication order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 7th December, 2023 in respect of the tax period July 2017 to March 2018 an appeal was filed before the Appellate Authority under Section 107 of the said Act.
2. According to the petitioner, inasmuch as no amount was due and payable by the petitioner and further since the petitioner had made payment of tax in Form GST DRC 03 on 6th February, 2020 in respect of the self-same tax period, the petitioner was entitled to benefit thereof, and as such did not make payment of pre-deposit.
3. Ms. Dey, learned Advocate appearing on behalf of the petitioner, would submit that the Appellate

Authority by disregarding the aforesaid contention had dismissed the appeal on the ground of non-payment of pre-deposit. She insists that this Hon'ble Court should take into consideration the payment made by the petitioner in Form DRC 03 on 6th February, 2020. According to her, if the payment made by the petitioner through Form DRC 03 in the year 2020 is taken into consideration there would be no further requirement of the petitioner to make payment of pre-deposit.

4. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State-respondents, however, submits, admittedly in this case the petitioner did not make payment of the pre-deposit and for reason thereof, the appeal had been dismissed. No interference is called for.

5. Having heard the learned Advocates appearing on behalf of the respective parties, I find that the petitioner is aggrieved by the entirety of the order passed under Section 73 of the said Act on 7th December, 2023.

6. Section 107(6) of the said Act, inter alia, provides as follows:

"(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed."

7. From the above it would transpire that a registered tax payer in order to maintain an appeal before the appellate authority is required to make payment of a sum equal to 10 per cent of the remaining amount of tax in dispute in addition to the admitted amount of tax. As to whether or not the petitioner is entitled to the benefit in respect of payment made in the year 2020 through Form DRC 03 in my view, would have been subject-matter of appeal provided, the petitioner had made payment of the pre-deposit.

8. Having regard to the above although ordinarily the petitioner has a right to have its case adjudicated on merit which would involve scrutiny of not only the records but determination of factual issues, I am of the view, at this stage it would be prudent to permit the petitioner considering the willingness expressed by Ms. Dey at the time of dictating the order, to deposit 10 per cent of the remaining amount of tax in dispute along with an additional 10 per cent of the amount of tax in dispute.

9. In the event the petitioner makes payment of the aforesaid amount with the respondents the same shall be treated as a pre-deposit provided such payment is made within period of twenty one working days from the date of receipt of the server copy of this order.
10. If the payment as directed is made in the manner provided herein the Appellate Authority 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 making such payment. Accordingly the order dated 30th May, 2024 passed by the appellate authority is set aside.
11. With the aforesaid directions and observations, writ petition stands disposed of.
12. There shall be no order as to costs.
13. 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.)