26.09.2024
Item No.
ML 286
Saswata

W.P.A. 21176 of 2024

Shyam Babu Singh
versus
The Commissioner West Bengal Goods & Services Tax, & Ors.

Mr. Souvik Guha
Mr. Siddhartha Dasgupta
...For the petitioner

Mr. A. Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the State

1. Affidavit of service filed in Court today is retained with the record.

2. Challenging an order dated 29th July 2024 passed by the appellate authority under Section 107 of the WBGST /CGST Act, 2017 (hereinafter referred to as the said Act) the instant writ petition has been filed.

3. Records reveal that challenging the order dated 4th September 2023, which was preceded by a show cause notice which remained unresponded to, a belated appeal was filed before the appellate authority. Since, there was no appropriate explanation for the delay, the appeal stood rejected on such ground. It, however, appears that the appeal was accompanied by the pre-deposit as is required for maintaining an appeal.

4. Mr. Guha, learned advocate appearing for the petitioner submits that since the show cause notice preceding the adjudication order was uploaded under the column "*view additional notices*" in the portal, the petitioner could not identify such notice and the petitioner remained

unrepresented at the time of hearing, which resulted in an ex parte order of adjudication dated 4th September 2023.

5. It is submitted that since the appellate authority had rejected the appeal on the ground of delay, the ex parte order passed by the proper officer could not be tested out on merit. Mr. Guha submits that inasmuch as the appellate tribunal is yet to be constituted, the petitioner has been prevented from challenging the aforesaid order on merit. Having regard thereto, he submits that this Court, considering the case made out by the petitioner, may be pleased to take up the matter and hear it out on merit or in the alternative, remand the matter back to the appellate authority.

6. Mr. Siddiqui, learned Additional Government Pleader submits that admittedly in this case, despite being afforded with repeated opportunities of hearing, the petitioner did not respond to the show cause notice. The petitioner also chose not to challenge the order before the appellate authority within the time prescribed. The belated appeal filed by the petitioner also did not disclose sufficient explanation for the delay which resulted in rejection of the appeal. Having regard to the same, it is submitted that no interference is called for by this Court.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record.

8. In this case, it may be noticed that the petitioner complains that the petitioner was unable to locate the show cause notice in time for him to respond, since the same was uploaded under the column "*view additional notices*" in place of "*view notices and orders*". The aforesaid stand

taken by the petitioner though does not impeach the very adjudication order as the *"view additional notices"* is available on the drop down menu of the dash board yet since the same may have been an hindrance in locating the show-cause notice and the adjudication order dated 4th September, 2023, which are ordinarily uploaded under the section "view notice and order" where the same can be easily identifiable on the portal and noting that the petitioner has been denied to challenge the subsequent order passed by the appellate authority on 29th July, 2024 before the appellate tribunal by reason of the tribunal not being constituted, and considering the case made out, in order to test out the order passed by the proper officer on merit, it would be necessary to not only examine the records but also to determine the factual issues.

9. Having regard to the same and taking note of the peculiar facts of the case, in my view, it would be prudent at this stage to remand the matter back to the appellate authority by putting the petitioner on terms. In the event, the petitioner deposits an additional 10 per cent of the remaining amount of tax in dispute with the respondents within a period of 3 weeks from date and makes payment of costs of Rs.12,500/- with the respondents and a further amount of Rs. 12,500/- to the Calcutta High Court State Legal Services Committee, the appellate authority, having regard to the fact that the appellate tribunal is yet to be constituted and the petitioner may have been denied the opportunity to put forth his case at the first instance, shall hear out and dispose of the appeal on merit by giving an opportunity of hearing to the petitioner.

10. The appeal shall be heard on merits, subject to compliance of the above direction.

11. The additional deposit made by the petitioner with the respondents shall be treated to be pre deposit for all practical purposes.

12. With the above direction and observations, the writ petition being WPA 21176 of 2024 is accordingly disposed of.

13. 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.*)