01.10.2024
Item No.
AD 3
Saswata

W.P.A. 21478 of 2024
Shaikh Sons & Co. & Anr.
versus
The Union of India & Ors.

Mr. Himangshu Kumar Ray
Mr. Sushant Bagaria
Mr. Shiwani Shaw
Mr. Subhasis Podder
Mr. Amit Saha
Mr. Piyas Chowdhury
...For the petitioners
Mr. A. Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. T. Chakraborty
Mr. S. Sanyal
...For the State respondents
Mr. Debasish Saha
...For the respondent no.6 / Bank

1. Challenging an order passed under Section 79(1)(c) of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") issued in Form GST DRC – 13 dated 24th July 2024, the instant writ petition has been filed.

2. Mr. Ray, learned advocate appearing for the petitioners submits that the petitioners were unaware with regard to the adjudication order passed under Section 73 of the said Act dated 18th December 2023. He submits that the petitioner no. 2 is differently abled. In support of his contention he has placed reliance on a disability certificate issued by the Government of West Bengal, Uluberia Sub-divisional Hospital, Uluberia, Howrah dated 8th August 2007 appearing at page 111 of the instant writ petition to

demonstrate that the petitioner no.2 is suffering from congenial disease. He, would also, submits that the petitioner no. 2 is unable to travel without assistance.

3. According to Mr. Ray, the petitioners could not properly identify the show cause notice on the portal since it was uploaded in the "*additional notices and orders*" section of the portal and as such, the petitioners remained unrepresented before the proper officer. According to him, an ex parte determination had already been made under Section 73 of the said Act dated 18th December 2023 in respect of the tax period July 2017 to March 2018. Being unaware of such order, no appeal could be filed. It is submitted that by reason of the order of attachment, it is more likely than not that the dealership of the petitioners with the Indian Oil Corporation Limited would be cancelled, which would have an adverse impact on the livelihood of the petitioners. Having regard thereto, Mr. Ray submits that this Court may be pleased to stay the order of attachment on such terms, as this Court may deem fit and proper.

4. Mr. Siddiqui, learned Additional Government Pleader, on the other hand submits that the petitioners neither responded to the show cause notice nor appeared before the proper officer, which resulted in the adjudication order being passed. Even, thereafter no challenge has been thrown to the

adjudication order. According to him, the adjudication order had duly been uploaded on the portal. There is no explanation as to what prevented the petitioners from challenging the same in time. As such no interference is called for.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that the petitioners did not contest the show cause notice, which resulted in the order dated 18th December 2023.

6. Although, the explanation given by the petitioners does not appear to be appropriate, but having regard to the fact that though a further remedy is available to the petitioners in the form of an appeal before the appellate tribunal, however, by reasons of such tribunal not being constituted, the petitioners had been denied the benefit of such remedy, it has become necessary to test out the adjudication order on merits.

7. In order to ascertain the correctness of the aforesaid order, since, it would be necessary for this Court to scrutinize the records and to decide factual questions, I am of the view that it would be prudent at this stage to permit the petitioners to apply before the appellate authority under Section 107 of the said Act. At the same time, taking note of the fact that the attachment order has already been issued, I am of the

view that in the event, the petitioners make payment of Rs.3,00,000/- (Rupees Three Lakhs only) with the respondents, which shall be treated as pre deposit, within a period of 10 working days from the date of receipt of the server copy of this order and files an appeal electronically with the appellate authority, the appellate authority shall hear out and dispose of the appeal on merits as expeditiously as possible, preferably within a period of 8 weeks from the date of filing of such appeal.

8. On filing of the appeal and on payment of the aforesaid pre deposit, the respondent no. 4 shall forthwith issue appropriate direction to the respondent no.6, being the Branch Manager, SBI, Ayodha Branch, Howrah, recalling the aforesaid order of attachment issued in Form GST DRC – 13 dated 24th July 2024.

9. With the aforesaid directions and observations, the writ petition being WPA 21478 of 2024 is accordingly 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.*)