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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 22355 of 2024

Shri Balaji Udhyog
Versus
The State of West Bengal & Ors.

Mr. Avra Mazumder
Mr. Giridhar Dhelia
Ms. Alisha Das
Mr. Suman Bhowmik
Mr. Samrat Das
Ms. Elina Dey
Mr. Sourendra Nath Banerjee
... For the petitioner.

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

1. Challenging the order dated 26th June, 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.

2. Ms. Dey, learned advocate appearing in support of the aforesaid writ petition would submit that being aggrieved by an order passed under Section 73 of the said Act, dated 20th February, 2024 for the tax period April, 2018 to March, 2019, an appeal was filed before the appellate tribunal under Section 107 of the said Act.

3. According to Ms. Dey, since the petitioner overlooked the e-mail issued by the respondent no.3 as regards the date of hearing, the petitioner could not take appropriate steps in the appeal and for failure on the part of the petitioner for making payment of the per-deposit, the appellate authority had dismissed the appeal. Ms. Dey would submit that the petitioner is ready and willing to make payment of the pre-deposit in respect of the disputed amount of tax. She submits that this Hon'ble Court may be pleased to remand the matter to the appellate authority by placing the petitioner on such terms that this Hon'ble Court may deem fit and proper. She further submits that unless the direction as prayed for is issued, the petitioner shall be rendered remediless as the Appellate Tribunal under the said Act is yet to be constituted.

4. Mr. Chakraborty, learned advocate enters appearance on behalf of the State respondents.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that in the instant case, being aggrieved by an order passed under Section 73 of the said Act, an appeal was filed. Admittedly, such appeal had been filed without making payment of the pre-deposit as is required for maintaining an appeal. Although, the

petitioner acknowledges the factum of service of notice, I find that the petitioner contends that due to oversight the petitioner could not take appropriate steps in the matter. It is also the petitioner's case that in absence of the Appellate Tribunal the petitioner has been compelled to approach this Court.

6. Taking note of the aforesaid and since the order passed by the proper officer could not be tested by reasons of the petitioner failing to make payment of the pre-deposit which the petitioner now submits is ready and willing to pay, I am of the view that this matter may be remanded to the appellate authority, subject to the petitioner's depositing 20 per cent of the tax in dispute, which amount shall be treated to be pre-deposit for all practical purpose, within a period of three weeks from the date of receipt of the server copy of this order.

7. In the event, the aforesaid deposit is made within the time specified herein, the appellate authority having regard to the direction passed herein shall hear out and decide the appeal on merits as expeditiously as possible, preferably within a period of eight weeks from the date of making payment of pre-deposit and communication of this order.

8. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)