

04.10.2024
Item No.
AD 6
Saswata

W.P.A. 24866 of 2024

**Shri Sushil Kumar Agarwala
versus
The Assistant Commissioner, CGST & CX, Shyambazar
Division, Kolkata North Commissionerate & Ors.**

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyus Khaitan

...For the petitioners

Mr. Vipul Kundalia
Mr. Abhradip Maity

...For the CGST authorities

Mr. Aryak Dutt
Mr. Samrat Ghosh

...For the respondent no. 4

1. Challenging the order in original dated 27th March 2024, passed under Section 73(2) of the Finance Act, 1994 read with Section 174(2) of CGST Act, 2017, the present writ petition has been filed. This matter had been mentioned on the ground of urgency since a recovery notice had been issued on 22nd August 2024.

2. Mr. Kanodia, learned Advocate appearing on behalf of the petitioner by drawing attention of this Court to the provisions of Sections 173 and 174(2)(a) and (e) of the WBGST Act 2017/CGST Act 2017 (hereinafter referred to as the “said Act”) would submit that consequent upon enforcement of the said Act, and the aforesaid sections with effect from 1st July, 2017, no new proceedings could have been initiated under the provisions of the Finance Act, 1994.

3. Having regard thereto, he would submit that determination made by the adjudicating authority on 27th March, 2024 is *non est* and is unenforceable and

pending hearing of this petition such order needs to be stayed.

4. Mr. Kundalia, learned advocate appearing on behalf of the CGST authorities would, however, submit by drawing attention to the provisions of Section 174(2) (e) of the said Act that the same does not have the effect of interfering with any investigation, enquiry and verification as well as adjudication or recovery of arrears and the respondents have a right to enforce such orders by treating the Finance Act, 1994, not to have been omitted. He seeks leave to file Affidavit-in-opposition to the present writ petition.
5. Having heard the learned Advocates for the respective parties, I am of the view that as the writ petition raises jurisdictional issue the writ petition should be heard.
6. Considering the prima facie case, however, at the same time taking note of the fact that already an adjudication order dated 27th March, 2024 has been passed, the petitioner at this stage should be directed to secure at least a portion of the demand raised by the respondents.
7. In view thereof, the petitioner is directed to deposit a sum of Rs.50,000/- with the learned Registrar General, Appellate Side, High Court, Calcutta within 8th October 2024.
8. There shall, however, be an unconditional stay of the order passed by the adjudicating authority dated 27th March, 2024 forming subject matter of challenge in the writ petition for a period upto 8th October, 2024.

9. If the petitioner deposits the aforesaid amount of Rs.50,000/- with the learned Registrar General of this Court, the same shall be invested in an interest bearing fixed deposit account in any nationalized Bank of his/her choice and the same shall be kept renewed until further orders of this Court.
10. In the event of the deposit of Rs.50,000/- in the manner as indicated hereinabove, the interim order passed herein shall continue till disposal of the writ petition or until further orders, whichever is earlier.
11. Let affidavit-in-opposition to the present writ petition be filed within a period of 6 weeks after the annual vacation. Reply, if any, thereto, be filed within 4 weeks thereafter.
12. Liberty to mention after expiry of the period for exchange of affidavits.

(Raja Basu Chowdhury, J.)