

19.02.2024
BD/Ct. 02
sl no. 14

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction**

W.P.A. 206 of 2024

ABG Construction

-vs-

The Assistant Commissioner, CGST & Central Exise, Bolpur
Commissionerate & Ors.

Dr.Navin Barik
Ms. Esha Acharya

....for the petitioner.

Mr. Ratan Banik
Mr. Bishwa Raj Agarwal

....for the respondents.

In the writ petition original order dated 10th November, 2023 passed by the Principal Commissioner CGST, Bolpur Commissionerate has been questioned on the score that after hearing the learned advocate representing the petitioner on 23rd February, 2023 opportunity was granted to the petitioner to submit reconciliation statement, copies of agreement, work orders, payment certificates and other relevant documents within seven days as it has been recorded in the document which is at page 45 of the writ petition.

According to the petitioner without giving any credence to these documents which were submitted within the specified time the impugned order dated 10th November, 2023 was

passed which demonstrates a situation where petitioner is not required to invoke appeal provisions and petitioner is entitled to invoke writ jurisdiction of this Court and accordingly the present writ petition has been instituted. In support of such contention reliance has been placed on the judgment of the Apex Court reported in **(2019) 4 SCC 500 (Sarvepalli Ramaiah & Ors. -vs- District Collector, Chittoor District and Others.)**, paragraph 40.

According to the petitioner failure to take into consideration the documents which petitioner was to submit within seven days as it appears from page 45 attracts writ jurisdiction due to failure of compliance of principles of natural justice.

In addition thereto it has been contended that under section 86(1) of the Finance Act, 1994 in the event of preferring an appeal petitioner is required to pay 7.5% of the amount which is also creating hindrance in the matter of preferring an appeal. According to the petitioner, the issue involved in adjudication process which has been made by the Principal Commissioner is

such that the petitioner is not required to pay 7.5% of the amount as contemplated under the relevant statutory provisions.

Learned advocate representing the concerned respondent authorities has submitted that there is availability of appeal provision against the order dated 10th November, 2023 therefore, the present writ petition is not maintainable.

Learned advocate representing the concerned respondent authorities has also made an attempt to defend the decision of the Principal Commissioner.

Having considered the submissions made on behalf of the parties and on perusal of the impugned order dated 10th November, 2023 it appears primarily the grievance of the petitioner centers around non consideration of certain documents which are indicated at page 45 of the writ petition which petitioner submitted within the time but those materials were not considered according to the petitioner while passing order dated 10th November, 2023.

It is settled principle of law as enunciated by the Apex Court in number of cases that availability of alternative remedy is no bar in entertaining a writ petition provided there is gross violation of principle of natural justice. In the case at my hand it transpires that petitioner was represented by the learned advocate on 23rd February, 2023 and certain materials were scheduled to be submitted before the adjudicating authority within seven days. If it is the case of the petitioner that without giving any credence to these materials which were submitted before the adjudicating authority order was passed on 10th November, 2023 in that event the grievance of the petitioner of non-considering such materials can well be taken into consideration by the appellate authority for which remanding the matter to the first authority is not required. In paragraph 40 of **Sarvepalli Ramaiah** (supra) it has been enunciated by the Apex Court that the grounds of challenge of an order of administrative authority can be perversity, patent illegality, irrationality, want of power to take decision and procedural irregularity. Taking note of the law laid down by the Apex Court in **Sarvepalli**

Ramaiah & Ors. (supra) this Court finds that there is no impediment in preferring appeal before the appellate authority in terms of the relevant provisions of the statute, since in the present case the grievance of the petitioner is non-consideration of materials as indicated in page 45 of the writ petition. It has also been enunciated by the Apex Court that normally writ petition ought not to be entertained due to availability of alternative speedy efficacious remedy. Therefore, the first contention of the petitioner based on page 45 of the writ petition and non-consideration of the materials by the authority as agitated before this Court stands negated.

On expressing view of this Court on the aforesaid issue during course of hearing out of desperation alternative point has been urged on behalf of the petitioner that in the event of preferring an appeal petitioner is required to pay 7.5% of the disputed amount which operates as fetter in preferring appeal. Requirement of depositing 7.5% of the disputed amount in terms of relevant statutory provision cannot be delved

into in this writ petition in absence of challenge being thrown to such relevant provision.

In aforesaid conspectus the writ petition stands dismissed.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)