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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 924 of 2024

Mphasis Engineers Co-operative Contract and Construction Society Ltd. and Anr.
-versus-
The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray,
Mr. Subhasis Podder
Mr. Abhilash Mittal
….for the petitioners.

Mr. Pretom Das,
Mr. Rima Sarkar
….for the State.

Mr. Subhasish Misra
….for the respondent no.7.

The affidavit of service filed in Court today is taken on record.

The petitioners have challenged an adjudication order by the authority under Section 74 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the 'WBGST') which is *pari materia* to the same Section under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CGST'). The adjudication is in respect of the period 2019-2020. The order has been passed on 10th January, 2022. The order impugned is an appealable order under the provisions of Section 107 of the WBGST and CGST Act, 2017. The time to file the appeal has, however, expired.

This writ petition has been filed on 29th April, 2024. The petitioners say that on 9th April, 2024, the respondent has already recovered a sum of Rs.35,39,000/- against the tax amount of Rs.30,12,026/- by adding thereto cess, interest and penalty, the aggregate whereof is Rs.64,78,167/-

After hearing the parties and considering the materials on record, though there is no absolute bar in maintaining a writ petition where the order is amenable to statutory appeal, that is, an alternative remedy being available, but in this case where factual appreciation of the matter is required, the Appellate Authority is more equipped and competent than the writ Court exercising judicial review under Article 226 of the Constitution of India to undergo such exercise.

I also find that justice will be sub-served, if I permit the writ petitioners to file an appeal under the provisions of Section 107 of the WBGST and CGST Act, 2017 within a period of two weeks from date.

In the event, such appeal along with the requisite pre-deposit is filed by the petitioners within the time frame provided, then the Appellate Authority, without going into the issue of limitation shall decide the appeal on merits.

In the event the appeal is filed within the time period as indicated in this order, the writ petitioners as appellants will be entitled to seek stay of the recovery proceedings before the Appellate Authority.

The petitioners shall be entitled to adjustment of Rs.35,39,000/- said to have been recovered on 9th April, 2024 against the final order to be passed by the Appellate Authority.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Since I have not called for any affidavits, the allegations contained in the application, are deemed to have been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for be supplied to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)