

Court No. 2
10.07.2024
Item No.24
dc.

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 1383 of 2024

Rajesh Kumar Agarwal
VS
State of West Bengal & Ors.

Mr. Dhiraj Lakhotia,
Ms. Radhika Agarwal,
Ms. Meghana Joshi,
Ms. Khushi Kundu
... for the petitioner.

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

The petitioner is aggrieved by the order of the appellate authority being the Additional Commissioner, Commercial Taxes (W.B.), Siliguri Circle, Siliguri in Appeal No. AD1903240256733 dated 13.06.2024. The appellate authority restricted itself to Section 107(4) of the WBGST Act, 2017 and did not take into account the provisions of the Limitation Act.

Learned advocate for the State is present.

I have considered the submissions and the judgement of Division Bench in S.K. Chakraborty & Sons Vs. Union of India reported in (2024) 159 taxmann.com 259 (Calcutta) wherein it has been specifically observed that provisions of Section 107 of WBGST Act, 2017 does not exclude the applicability of

the Limitation Act, 1963 expressly. To that effect, learned advocate for the petitioner draws the attention of the court to explanation provided therein.

Having considered the observations of the Hon'ble Division Bench and the ratio decided therein, I am of the view that the appellate authority should consider the explanation provided by the petitioner in the background of not only under Section 107 of WBGST Act, 2017, but also under Section 5 of the Limitation Act, 1963.

In view of the observations made hereinabove, the order dated 13.06.2024 passed by the Additional Commissioner, Commercial Taxes (W.B.), Siliguri Circle, Siliguri in Appeal No. AD1903240256733 is hereby set aside.

The appellate authority will rehear the issue in view of the observations made above and take into account the ratio decided in the judgement of S.K. Chakraborty & Sons (supra).

The writ petition being WPA 1383 of 2024 is, thus, allowed.

Pending connected application, if any, is consequently disposed of.

There shall be no order as to costs.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)