

08.01.2024
Item No.18
gd/ssd

WPA/1877/2023

JASKARAN LUNAWAT
VS
STATE OF WEST BENGAL & ORS.

Mr. Prosenjit Das,
Mr. Abhilash Mittal
..for the petitioner

Mr. Subir Kumar Saha, AGP,
Mr. Dilip Kumar Agarwal
... for the State

The order passed in appeal under Section 107 of the West Bengal Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Act, 2017 for the period 2017-2018 is under challenge in this writ petition.

Learned Advocate appearing for the petitioner, in his usual fairness submits, that the said order is an appealable one but since the appellate tribunal has not yet been constituted, the petitioner has challenged the impugned order in this writ petition.

Learned Advocate for the petitioner places reliance upon the judgment of the Hon'ble Division Bench of the Bombay High Court dated February 8, 2023 in a batch of writ petitions, lead case being writ petition no. 10883 of 2019 Rochem India Pvt. Ltd. vs. The Union of India & Ors. and submits that the parties should be restrained from giving effect to the order impugned.

Mr. Agarwal, learned Advocate appearing for the State places reliance upon subsection 8 of Section 112 of the Central Goods and Services Act, 2017 and submits that the petitioner is required to deposit the

remaining amount of tax in dispute in addition to the amount paid under Section 107 (6) of the Act for being favoured with an interim order.

He, therefore, submits that the writ petitioner is trying to bypass the statutory remedy in order to avoid compliances mandated under Section 112(8) of the said Act.

Learned Advocate for the petitioner submits that the Division Bench of the Calcutta High Court in its order dated May 12, 2023 in MAT 720 of 2023 in the case of Jai Venktesh Concast Private Limited and Anr. vs. Deputy Commissioner of State Tax, ITC Investigation Unit and ors. has held that there is no requirement to comply with the condition for making pre-deposit in terms of Section 112(8) of the Act.

Mr. Agarwal distinguishes the judgment of the Hon'ble Division Bench by submitting that the Hon'ble Division Bench exercised its discretion in the peculiar facts and circumstances of that case as in the case of Jai Venktesh Concast Private Limited and Anr. (Supra) the State authority and the Central authority were proceeding with the investigation/proceedings simultaneously. He submits that, therefore, the decision of the Hon'ble Division Bench of the Calcutta High Court cannot be applied to the case on hand as the petitioner could not make out any peculiar facts and circumstances.

Heard the learned advocates for the parties and perused materials placed.

The order impugned is appellable under Section 112 of the West Bengal Goods and Services Tax Act, 2017 corresponding to the Central Goods and Services Tax Act, 2017 and the appeal lies to the Appellate Tribunal.

It is not in dispute that the Appellate Tribunal has not yet been constituted.

The Government of India, Ministry of Finance, Department of Revenue Central Board of Direct Taxes and Customs GST Policy Wing issued a Circular dated 18th March 2020 on the subject of clarification in respect of appeal with regard to the non-constitution of Appellate Tribunal.

Paragraph 4.2 of the said circular reads as follows-

“4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019**. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order **or** date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, **whichever is later.**”

The Hon'ble Division Bench of the Bombay High Court in the case of Rochem India Pvt. Ltd. (supra) after taking note of paragraph 4.2, 4.3 and 5 of the said circular observed that the Government with the intent that the taxpayers are not prejudiced for want of the tribunal extended the period of limitation.

After taking note of the fact that non-constitution of the Tribunal is causing hardship to the tax payers it was held that the tax payers are to be granted a protection for a limited period till the Tribunal becomes functional.

Hon'ble Division Bench disposed of by passing the following protection paragraph 12 of the Bombay High Court-

“12. Therefore, we dispose of the Petitions as follows.

a) The period of filing the Appeal will stand extended as indicated in Clause 4.2 of the Circular dated 18 March 2020.

b) The impugned order will not be given effect until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular dated 18 March 2020 is over.”

Mr. Agarwal would contend that the writ petitioner may be granted liberty to approach the Appellate Tribunal after the same becomes functional as the order impugned is an appealable one but no interim protection should be extended to the petitioner.

It is well settled that in the event the statutory remedy is not available, writ petition is maintainable.

However, in view of the submission of Mr. Agarwal that the petitioner should be directed to approach the Appellate Tribunal once the same becomes functional, this Court is inclined to entertain this writ petition only for the limited purpose of granting protection to the petitioner in the interregnum otherwise the petitioner will be prejudiced.

This Court is also of the considered view that a reasonable time should be allowed to the petitioner to approach the Appellate Tribunal after it becomes functional. This Court is, therefore, inclined to follow the time limit stipulated in paragraph 4.2 of the Circular dated 18th March, 2020 as such time limit appears to be reasonable within which the petitioner will be at liberty to file the appeal before the Appellate Tribunal.

The Revenue authorities cannot also be permitted to take advantage of this peculiar situation i.e. non-constitution of the Tribunal to realize the amount demanded by the impugned order..

In view thereof, this Court is of the considered view that the following order will protect the interest of the petitioner as well as the Revenue.

WPA 1877 of 2023 is disposed of by passing the following orders- (a) the period of filing the appeal by the petitioner will stand extended as indicated in Clause 4.2 of the Circular dated 18th March 2020; (b) the order impugned in this writ petition shall not be given effect to until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular dated 18th March 2020 is over.

It is, however, made clear that the petitioner will be at liberty to raise all contentions which have been raised in this writ petition before the Appellate Tribunal.

(HIRANMAY BHATTACHARYYA, J.)