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27.09.2024
AGM

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A 1999 of 2024

Subrata Laskar
-versus
The Additional Commissioner, CGST and Central Excise (Appeal) & Ors.

Mr. Bikramaditya Ghosh.
Ms. Supriya Singh.
Mr. Swarup Das.
Mr. Ved Rai.
...For the Petitioner.

Mr. Biswaraj Agarwal.
Mr. Dilip Kumar Agarwal.
...For the CGST.

The petitioner is aggrieved by the order passed by the appellate authority in rejecting the appeal filed by the petitioner on the ground that no appeal under the notification no. 53/2023-Central Tax dated 2nd November, 2023 is admissible in respect of a demand not involving tax.

The registration of the petitioner stood cancelled as he filed to furnish the return for a continuous period of six months. The appeal preferred by the petitioner was also beyond the prescribed time period.

Prayer has been made to direct the appellate authority to adjudicate the appeal on merits on condoning the delay and without referring to the above notification.

Reliance has been placed on the order passed by the Hon'ble Division Bench on 9th April, 2024 in MAT

1639 of 2024 with IA no. CAN 1 of 2024 (Subhankar Golder –vs- Assistant Commissioner of State Tax, Serampore Charge & Ors.) wherein the Court held that the appellant can be provided one more opportunity to remedy the breach. The order of cancellation of registration was set aside subject to the condition that the appellant files returns for the entire period of default, pays requisite amount of tax and interest and fine and penalty. If the direction passed by the Court was complied with, the jurisdictional officer was directed to restore the registration. The Court further directed the respondents to open the portal so that the returns can be filed the tax, interest, penalty and fine can be remitted by the appellant.

Reliance has also been placed on the order dated 29th July, 2024 passed by a coordinate Bench of this Court in WPA 14229 of 2024 (Biswajit Basu –vs- The Superintendent of Central Goods and Services Tax and Central Excise, Range – I, Joka Division & Ors.).

The petitioner asserts that there is no tax due and payable.

Vide judgment dated 1st September, 2022 passed by the Hon'ble Division Bench of this Court in **MAT 1376 of 2022 with IA No. CAN 1 of 2022 (Bisweswar Midhya, Proprietor of Midhya Construction –vs- The Superintendent, CGST & CX Range V, Haldia II Division, Haldia CGST & CX Commissionerate & Ors)** held that suspension of a license of dealer will be counter productive and would work against the interest of the revenue. If the registration of a dealer is cancelled, the dealer cannot carry on its business which in turn would impact the recovery of taxes. The Department has to take a pragmatic view because a taxpayer is not to be treated as a person hostile to the department. If the taxpayer adopts dubious process to evade payment of tax then he has to be dealt with firmly.

The petitioner intended to challenge the order of the adjudicating authority before the appellate forum but there has been a delay in doing so. At the same time the petitioner relied upon the notification dated 2nd November, 2023 which is not applicable in the case of the petitioner. The appeal was, accordingly, dismissed.

As the Hon'ble Division Bench held that cancellation of registration certificate will be counter productive to the revenue and as the Court permitted the taxpayer to remedy the breach of not filing the returns accordingly, in line with the ratio laid down in the precedents referred to hereinabove in the instant writ petition is disposed of by directing the appellate authority to consider the application filed by the petitioner seeking condonation of delay in preferring the appeal. If the delay is condoned, then the appellate authority shall proceed to decide the appeal on merits without referring the notification dated 2nd November, 2023.

The impugned order of the appellate authority stands set aside.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)