01
11.01.2024
Ct. No.1
Sws.m

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

MAT 182 of 2023
with
CAN 1 of 2023

Dhurba Kumar Pradhan
Vs.
Deputy Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal

….for the appellant

Mr. Joyjit Choudhury, Ld. AAG
Mr. Hirak Barman
Mr. Pritom Das

…for the State

Mr. Ratan Banik
Mr. Biswaraj Agarwal

…..for the respondent No. 4 & 6

Heard Mr. Boudhayan Bhattacharyya, learned counsel for the appellant/petitioner and Mr. Joyjit Choudhury, learned Additional Advocate General and Mr. Ratan Banki, learned counsel for the Commissioner of Central Goods and Service Tax

On 08.01.2024 this Court passed the following order:-

> *"1. Heard Mr. Boudhayan Bhattacharyya, learned Advocate for the petitioner, Mr. Jayjit Chaudhury, learned Additional*

Advocate General assisted by Mr. Hirak Barman, learned State Advocate.

2. This intra Court appeal has been filed praying to set aside the judgement and order dated 20.09.2023 in WPA/336/2023 (Dhruba Kumar Pradhan –Vs. Deputy Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.) passed by the learned Single Judge, whereby the writ petition filed by the appellant herein was dismissed on the ground that uploading of summary of order in terms of Rule 142(5)/(6) of the West Bengal Goods & Service Tax Rules, 2017 (hereinafter referred to State Rule, 2017) is service of order upon the petitioner under Section 74(9) of the West Bengal Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 (hereinafter referred to WBGST Act/CGST Act, 2017).

3. Briefly stated facts of the present case are that the appellant/petitioner is a dealer registered under the WBGST Act/CGST Act, 2017. According to the appellant an adjudication order under Section 74(9) of the WBGST Act was passed against the appellant/petitioner but it was not served and instead only a demand notice under Rule 142(6) of the State Rules was uploaded *on the website. Since adjudication order under Section 74(9) of the WBGST/CGST Act, 2017 was not served upon the appellant/petitioner, therefore, he could not file appeal under Section 107 of WBGST/CGST Act, 2017. When demand was being pressed, the appellant/petitioner challenged that demand notice by filing WPA/336/2023 which has been dismissed by the impugned judgment and order dated 20.09.2023 passed by the learned Single Judge. Aggrieved, the petitioner has filed the present appeal.*

4. Learned counsel for the appellant/petitioner submits that copy of adjudication order is required to be served upon the assessee/petitioner in terms of Section 74(9) read with Section 169 of the WBGST/CGST Act. In the absence of service of the adjudication order, no appeal could be filed by the petitioner in terms of Section 107 of WBGST/CGST Act, 2017. Therefore, the learned Single Judge has committed manifest error of law and fact to dismiss the writ petition, particularly when according to the admitted case of the respondents, order under Section 74(9) of the WBGST/CGST Act, 2017 has not yet been served upon the petitioner and merely a demand notice under

Rule 142(6) of the State Rules, 2017 has been uploaded on the website.

5. Learned Additional Advocate General assisted by the State Advocate submits that order under Section 74(9) of the WBGST/CGST Act needs to be served in the manner prescribed under Section 169 but a presumption has to be drawn on uploading of summary under Rule 142(6) of the State Rules, 2017 that the order under Section 74(9) has been served upon the petitioner in terms of Section 169 of the WBGST/CGST Act, 2017. Learned Additional Advocate General further submits that he wants a day's accommodation to take proper instructions and to find out as to whether the order under Section 74(9) was served upon the appellant/petitioner by any of the modes prescribed under Section 169 of the WBGST/CGST Act, 2017.

6. As prayed by the learned Additional Advocate General, list on 10.01.2024."

Today, learned Additional Advocate General for the State-respondents stated that a copy of the final order under Section 74(9) of the West Bengal Goods and Service Tax Act/ Central Goods and Service Tax Act, 2017 shall be served upon the petitioner within a week and he may file an appeal before the competent authority under Section 107 of the Act, if so advised and in the event the appeal is filed by the appellant/petitioner, it shall be decided by the appellate authority in accordance with law without raising any objection as to limitation.

Learned counsel for the petitioner states that the appellant/petitioner shall appear within a week before the concerned proper officer/the respondent No. 1 and shall receive copy of the final order passed under Section 74(9) of the Act and thereafter file an appeal within the time as may be stipulated by this Court and in the event the appeal is filed, it may be decided by the appellate authority within a time bound period.

Considering the facts and circumstances of the case, the statement made by learned counsels for the parties as afore-noted and on their agreement, we set aside the impugned judgment and order dated 20.09.2023 in WPA 336 of 2023 (Dhruba Kumar Pradhan vs. Deputy Commissioner of Revenue, Bureau of Investigation, North Bengal Headquarters & Ors.) passed by the learned Single Judge, and dispose of this Appeal as well as the aforesaid writ petition with the following directions:-

(i) The petitioner shall appear before the proper officer/the respondent No. 1 on 16.01.2024 at 11.30 a.m. and thereupon the respondent No. 1 shall serve upon him personally under acknowledgement, a copy of the final order passed under Section 74(9) of the Act for the period 2018-2019.

(ii) On getting a copy of the order as aforesaid, the appellant/petitioner, if so advised, may prefer an appeal under Section 107 of the Act, before the appellate authority within four weeks thereafter.

(iii) In the event, the appeal is filed within the stipulated period as aforesaid, then it shall be decided by the appellate authority in accordance with law within next two months, after affording reasonable opportunity of hearing to the appellant/petitioner

(iv) Any amount either recovered from the appellant/petitioner or deposited by the appellant/petitioner pursuant to the aforesaid final order, shall remain subject to the result of the appeal.

For a period of three months from today or till decision in appeal, whichever is earlier, no coercive action shall be taken against the appellant/writ petitioner pursuant to the order in question passed under Section 74(9) of the Act.

It is made clear that we have not expressed any opinion on merits of the case of either of the parties.

In view of the aforesaid, MAT 182 of 2023 alongwith connected application being CAN 1 of 2023 is **disposed of.**

(Surya Prakash Kesarwani, J.)

(Rai Chattopadhyay, J.)