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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 925 of 2025

Dipankar Biswas
Versus
The Deputy Commissioner of State Tax,
Berhampore Circle & Ors.

Mr. Prithu Dudhoria
... For the petitioner

Mr. A. Ray
Mr. T. M. Siddiqui, Sr. Advocate,
Mr. Tanoy Chakraborty
Ms. S. Shaw
Mr. S. Sanyal
... For the State.

1. Challenging the order dated 28th June, 2024 passed by the appellate authority under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), arising out of a determination made under Section 74 of the said Act dated 20th June, 2022, the instant writ petition has been filed.

2. The records would reveal that immediately after the final assessment, adjudication was made under Section 74 of the said Act, the petitioner did not take any steps. Subsequently, an appeal was filed by the petitioner on 24th November, 2023 to take advantage of a scheme notified on 2nd November, 2023 which permitted the time-

barred appeals to be filed from orders passed by the proper officer on/or before 31st March, 2023 under Section 73/74 of the said Act provided such appeals were filed on/or before 31st January, 2024 and in addition, the full amount of admitted tax, interest, fine and penalty is paid by the registered tax payer and a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order subject to a maximum of Rs.25 crores in relation to which the appeal has been filed, out of which at least 20% should be paid by debiting from electronic cash ledger of registered tax payer.

3. The records would reveal that although, the appellate authority found that the petitioner was otherwise eligible to apply in terms of the notification dated 2nd November, 2023, however, since the petitioner did not pay the required pre-deposit amount of 2.5% of the disputed tax amount in respect of the WBGST by debiting electronic cash ledger, as required, the petitioner was found ineligible and his appeal was accordingly rejected as barred by limitation.

4. Mr. Dudhoria, learned advocate appearing on behalf of the writ petitioner has placed before

this Court the order impugned in support of his contention that no tax was due and payable in respect of the WBGST and having regard thereto, there was no irregularity on his part in not making payment of 2.5% of the disputed tax by debiting his electronic cash ledger, since according to him, the entire amount of tax on account of WBGST had been realized by the respondents by debiting his credit ledger.

5. Mr. Siddiqui, learned senior advocate and Additional Government Pleader appearing on behalf of the State respondents would acknowledge the fact that the entire amount of tax as per DRC-7 which forms subject matter of appeal on account of WBGST had already been realized from the petitioner.

6. Having heard the learned advocates appearing for the respective parties, I am of the view that since the entire amount of tax on account of WBGST has been recovered from the petitioner, there is no question for the petitioner to make further deposit of 2.5%. Paragraph 3 of the scheme dated 2nd November, 2023 enables the registered tax payer to prefer an appeal beyond the ordinary time prescribed subject to the registered tax payer fulfilling the pre-condition

for maintaining such appeal. Admittedly in this case, the appellate authority has come to a finding that the petitioner fulfils all other pre-condition for maintaining the appeal save and except making payment of 2.5% of the disputed tax in respect of the WBGST, by debiting his electronic cash ledger. Admittedly, in this case, since the entire amount of the demand on account of tax insofar as WBGST is concerned, as would appear from the order impugned had already recovered, in my view the same obviously constitute 50% of the entire demand made in GSTDRC 07 forming subject matter of challenge in the appeal. The aforesaid order shall also demonstrate that in addition to the above, a sum of Rs.49,880/- has also been recovered from the petitioner on account of CGST.

7. Having regard thereto and considering the fact that at present the Appellate Tribunal is not available, in the fitness of things, it would only be proper to remand the matter back to the appellate authority for a decision on merits.

8. Accordingly, the order dated 28th June, 2024 is set aside. The matter is remanded back to the appellate authority for a decision on merits.

9. With the above observations and directions the

writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)