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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1352 of 2025

M/s. Jyoti Tar Products Private Limited & Anr.
Versus
The Deputy Commissioner of State Tax,
Shibpur Charge WBGST & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
... For the petitioners

Mr. Anirban Ray, GP
Md. T. M. Siddiqui, AGP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
... For the State.

1. Challenging the order passed by the proper officer under Section 73 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") dated 24th November, 2023, an appeal was filed before the appellate authority under Section 107 of the said Act.

2. Simultaneously, with the filing of the appeal, the petitioners had also deposited the pre-deposit as is required for maintaining the appeal.

3. The appeal was dismissed by an order dated 24th December, 2024, confirming the demand and penalty levied by the proper officer under the said Act.

4. Immediately, after the said order was passed, the petitioners had by communication in writing dated 31st December, 2024, intimated the respondents that being aggrieved by the order dated 24th December, 2024, the petitioners intend to file an appeal before the Appellate Tribunal. Since, the Appellate Tribunal has not been made operational, the petitioners, had in terms of Section 112(8) of the said Act read with Section 143 of the Finance (No.2) Act 2024, made the additional mandatory pre-deposit of 10 per cent of the disputed amount of tax, constituting Rs.17,658/- for CGST as also Rs.17,658/- for SGST. Accordingly having regard to the circular dated 11th July, 2024 and the provisions contained in Section 112(9) of the said Act, the petitioners had requested the respondents not to proceed with the recovery proceeding.

5. Ms. Agarwal, learned advocate appearing on behalf of the petitioners by placing before this Court a printout of the electronic liability ledger for the tax period 1st January, 2025 to 11th January, 2025, would submit that the respondents have already in the most illegal and arbitrary manner recovered from the petitioners, partly from the cash ledger and partly from credit ledger an amount of Rs.342/- and Rs.49988/- respectively aggregating to Rs.50,330/-. She would submit that in the facts noted hereinabove, the aforesaid recovery is bad in law and cannot be sustained.

6. Mr. Ray, learned Government Pleader appears on behalf of the State respondents. In response to a query of the Court he would submit that although, he is yet to receive any instruction in the matter, however, ordinarily, if any deposit is made in terms of Section 112(8) of the said Act and having regard to the circular dated 11th July, 2024 issued by the Central Board of Direct Taxes and Customs corresponding to West Bengal Government Circular no. 17/2024 dated 11th September, 2024, no further recovery is permissible at this stage.

7. Heard the learned advocates appearing for the respective parties. Considering the short point involved in the writ petition, the same is taken up for consideration.

8. Admittedly, in this case, the petitioners had preferred an appeal from the order passed under Section 73(9) of the said Act dated 24th November, 2023 for the tax period April, 2022 to March, 2023. From the perusal of Form GST APL-01, it would transpire that the petitioners had duly deposited the admitted amount of pre-deposit i.e. Rs.35,316/-. After the appeal was dismissed a demand was raised in Form GST APL -04. By a communication in writing dated 31st December, 2024 which was received by the respondent on 3rd January, 2025, the petitioners intimated the respondents that having regard to the provisions contained in Section 112(8) of the said Act read with Finance (No.2) Act, 2024 its intention to prefer an

appeal before the Appellate Tribunal and that the petitioners had deposited additional 10 per cent of the tax liability, aggregating to Rs.35,316/-. The factum of payment of the aforesaid amount would corroborate from the copy of the electronic liability ledger annexed to the writ petition. It would however, transpire from the copy of the electronic liability ledger as placed before this Court for the period 1st January, 2025 to 11th January, 2025 that a sum of Rs. Rs.342/- and Rs.49988/- aggregating to Rs.50,330/ has been recovered from the petitioner no.1's electronic cash ledger and electronic credit ledger respectively and the same is in respect of the recovery made against the demand for the tax period April, 2022 to March 2023. However, having regard to the provisions contained in Section 112(8) of the said Act and the fact that that petitioners' right to prefer an appeal before the Appellate Tribunal is subsisting which the petitioners could not exercise by reasons of the Appellate Tribunal not being constituted and also noting that the petitioner had deposited 10 per cent of the additional amount of tax in dispute in addition to the amount already deposited while preferring the appeal under Section 107(6) of the said Act, and with regard to the circular dated 11th September, 2024, I am of the view that instead of seeking response from the respondents whether any amount has already been recovered from the petitioners in the manner as aforesaid, the matter can be disposed of by directing the respondents themselves to consider whether the aforesaid recovery as disclosed by the petitioners through the copy of the electronic liability ledger for the tax period 1st January, 2025 to 11th January, 2025 has been made, and in the event it is found that the respondents have deducted the aforesaid amount in respect of the tax period April, 2022 to March, 2023 to forthwith recredit the same to the respective cash/credit ledger of the petitioners so that the same is reflected in the electronic liability ledger of the petitioners for the month of May, 2025.

9. With the above observations and directions, without going into the merits of the matter, the writ petition stands disposed of.

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

(Raja Basu Chowdhury, J.)