07.04.2025
Item Nos.
A 17
Saswata

WPA 1461 of 2025

Rohit Kedia
versus
Assistant Commissioner of State Tax, Lalbazar and Radhabazar Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
Mr. Akash Chakraborty
...For the petitioner
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Sr. Adv. & Ld. AGP
Mr. N.Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal
...For the State

1. Challenging the order dated 3rd January 2025 passed under Section 107 of the CGST / WBGST Act, 2017 (hereinafter referred to as the "said Act") the instant writ petition has been filed.

2. It appears that the original order under Section 73 of the said Act was passed on 28th March 2024 in respect of the tax period April 2018-March 2019. The said order forms subject matter of challenge in the appeal. The Form GST APL – 02 demonstrates that the petitioner had deposited the pre deposit of Rs.58,903/- as is required for maintaining such appeal. It is submitted that there was a delay of 47 days in preferring the appeal. Although, an explanation was given, the appellate authority without appropriately considering such explanation, had dismissed the appeal on the ground of limitation.

3. Mr. Choraria, learned advocate appearing on behalf of the petitioner submits that although the petitioner has an alternative remedy in the form of appeal before the appellate tribunal, however, since the appellate tribunal is yet to be constituted the petitioner has been compelled to approach this Court. He would submit that since the show cause notice was uploaded in the portal under the head additional notices and the petitioner having little knowledge

about computer operations, and also further due to illness of one of the family members, was unable to give his response.

4. Mr. Siddiqui, learned senior advocate and Additional Government Pleader appearing on behalf of the State submits that the appellate tribunal is yet to be constituted. According to him the order does not suffer from any irregularity.

5. Heard the learned advocates appearing on behalf of the respective parties and considered the materials on record.

6. It would transpire that the original order passed by the proper officer on 28th March 2024 for the tax period from 1st April 2018 to 31st March 2019 was based on a show cause which was not responded to by the petitioner. The explanation given by the petitioner and the challenge to such order is yet to be tested out as the matter was also not adjudicated by the appellate authority since the same was barred by limitation. Today, the petitioner has approached this Court insisting that the petitioner has a statutory remedy. The petitioner has been prevented from availing the same by reason of the appellate tribunal not being constituted. Having regard thereto, ordinarily this Court would be required to hear out this matter on merits, however, since the matter concerns computation of tax, if the matter is heard by the appellate authority at the first instance, it will be far more convenient to decide the factual issues considering the fact that the records are available on the portal which can be directly assessed by the appellate authority on the contrary for this Court to decide the matter

the entire records which are only available electronically on the portal, would be required to be downloaded for being produced.

7. Having regard thereto, I am of the view that in the fitness of things and considering the marginal delay, it would be proper to remand the matter back to the appellate authority for adjudication on merit. While setting aside the order passed by the appellate authority dated 3rd January 2025, I direct the appellate authority to hear out and dispose of the appeal on merit as expeditiously as possible preferably within a period of 6 weeks from date.

8. Since, the petitioner at this stage would submit that the petitioner's bank account has been attached, considering the fact that the petitioner has already made the pre deposit, I am of the view that such attachment cannot be permitted to continue. However, considering the fact that the matter has already been remanded back, I am of the view that in the event, the petitioner makes an application before the appellate authority, the appellate authority shall, having regard to the facts of this case and the observations made hereinabove, and if it is found that the attachment is restricted to the demand based on appellate order dated 3rd January, 2025, shall hear out and decide such application for release of the petitioner's bank account within a period of one week from filing of such application. The above application for release of the bank account from attachment must be decided first before proceeding to hear out the appeal.

9. With the above directions and observations, the writ petition being WPA 1461 of 2025 is accordingly disposed of.

10. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.)*