09. 05.05.2025
(M/L) Court No.05.

(Pritam)

WPA 2120 of 2025

Biplab Mondal.

-Vs.-

Additional Commisioner, CGST & Central Excise, Siliguri Commissionerate & Ors.

Mr. Souradeep Majumdar,
...for the petitioner.

Mr. Bhaskar Prosad Banerjee,
Mr. Tapan Bhanja
....for the respondent/CGST Authority.

Mr. Manasi Mukherjee,
Mr. Aishwarya Rajyashree
....for the UoI/respondent no.3.

1. Affidavit-of-service filed in court today be taken on record.
2. Challenging an order dated May 31, 2024 passed under Section 73(2) of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.
3. Mr. Majumdar, learned advocate representing the petitioner would submit that the show-cause cum demand notice dated October 20, 2021 was issued by invoking the proviso to Section 73(1) of the Finance Act, 1994. He would submit that there was no scope to invoke the extended period, notwithstanding the aforesaid, the same had been done. According to him, the work-orders awarded for construction were for public utility service, including construction of indoor stadium, improvement

of road by providing, divider and footpath railing, reconstruction of road side boundary wall, improvement and widening and strengthening of ferry approach road and other allied services. He would submit that the petitioner is entitled to the benefit of the mega exemption notification. Unfortunately by disregarding the same the impugned order has been passed, which cannot be sustained.

4. Mr. Banerjee, learned advocate appearing on behalf of the respondents would submit that the petitioner has an alternative efficacious remedy in the form of a statutory appeal and as such this Hon'ble Court may be pleased not to entertain the present writ petition.

5. Having heard the learned advocates appearing for the respective parties and noting that a final order under Section 73(2) of the Finance Act, 1994, read with Section 174(2)of the said Act has already been passed and noting that the petitioner has an alternative remedy under Section 85 of the Finance Act, 1994, there is no scope to entertain the present writ petition.

6. Having regard to the fact that the instant writ petition is being dismissed on the ground of alternative remedy and noting that the present writ petition was pending before this Court for quite some time, I am of the view that the petitioner should not be rendered remediless.

7. In view thereof in the event, the petitioner approaches the Appellate Authority by filing an appropriate appeal along

with an application for condonation of delay, the Appellate Authority having regard to the pendency of the proceeding before this Court and the observations made herein, upon condoning the delay, shall heard out and dispose of the appeal subject to compliance of other formalities by the petitioner.

8. With the aforesaid observation and direction, instant writ petition is disposed of without any order as to costs.

9. Urgent Photostat certified copy of this order may be supplied to the parties upon all formalities, if applied for.

(Raja Basu Chowdhury, J.)