WPA 3032 OF 2025

05.05.2025
Sl no. 36
Ct no. 5

P.M.

M/s. Cart Roadwings JV & Anr.

- Vs –

The Additional Commissioner, CGST and CX, Kolkata South Commissionerate & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Ms. Tulika Roy,
Mr. Piyush Khaitan
… for the petitioners.

Mr. Samir Kumar Datta,
Mr. Jasojit Mukherjee
…. For Union of India

Mr. Uday Shankar Bhattacharya,
Mr. Tapan Bhanja
… for CGST authorities.

1. The present writ petition has been filed, inter alia, challenging the order under Section 74 of the WBGST/CGST Act 2017 dated 8th January, 2025 for the tax period July 2017 to March 2021.

2. Mr. Kanodia, learned advocate appearing on behalf of the petitioners submit that since the petitioners' employee who was looking after the matter on behalf of the petitioner no.1 was suffering from Cancer, proper steps could not be taken by the petitioners to file the response to the show-cause.

3. It is also the petitioners' case that no appropriate opportunity of hearing was granted to the petitioners.

4. Mr. Bhattacharya, learned advocate appearing on behalf of the respondents submits that the petitioners have an alternative remedy in the form of appeal and as such no interference is called for.

5. Heard the learned advocates appearing on behalf of the respective parties and considered the materials on record. Admittedly in this case an order under Section 74 of the said Act has been passed on 8th January, 2025. Although, the petitioners would contend that the person who was looking after the matter had fallen sick and by reasons of the aforesaid, no response could be filed, I however, notice that in this case the show-cause was duly issued on 4th August, 2024 and the final order was passed more than five months thereafter. From the order impugned it transpires that the petitioners had also been afforded opportunity of hearing, which the petitioners did not take.

6. However, taking into consideration the fact the petitioners did not respond to show-cause and the contention of the petitioner no.1 is that it had been prevented from filing such response by reasons of health issue of its employee, though without going into the correctness of the allegations made in the petition, in my view, at this stage it could be prudent to permit the petitioners to approach the appellate authority under Section 107 of the said Act.

7. I may notice that the order impugned has been passed on 8th January, 2025 and the writ petition has been filed on 7th February, 2025. Since then the writ petition had remained pending till today. Having regard to the pendency of the writ petition and the refusal of this Court to entertain the same on the ground of alternative remedy, I am of the view that the petitioners cannot be rendered remediless. In view thereof, I permit the petitioners to approach the appellate authority within a period of four weeks from date. In the event, the appeal is filed within the aforesaid period, the

appellate authority shall hear out the appeal on merit.

8. It is made clear that since the petitioners claim that it had been prevented from filing any response by reasons of its employee being sick and undergoing medical treatment, the appellate authority shall treat the appeal petition as a first statement of defence of the petitioners. Appellate authority shall also provide opportunity of hearing to the petitioners and decide the appeal on merit in accordance with law subject to the petitioners complying with all other statutory formalities.

9. With this observation and direction this writ petition being WPA 3032 of 2025 is disposed of.

10. Urgent Photostat certified copy be made available to the parties, if applied for, upon usual formalities.

(Raja Basu Chowdhury, J.)