21.05.2025
Item No
AD 11
Saswata

WPA 9476 of 2025

M/S Hindusthan Enterprises & Anr.
versus
The Deputy Commissioner of State Tax, Shibpur Charge & Ors.

Mr. S.Bhattacharya
Mr. Uttam Baidya

...For the petitioners

Mr. A.Ray, Ld. GP
Mr. Md. T.M.Siddqui, Ld. AGP
Mr. T.Chakraborty
Mr. Saptak Sanyal

...For the State

1. Affidavit of service filed in Court today is retained with the record.

2. Challenging the appellate order dated 25th February 2025 passed under the provisions of Section 107 of the CGST / WBGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

3. Records reveal that after the assessment order was passed under Section 73 of the said Act on 1st April 2024 in respect of the tax period April 2018 to March 2019, the petitioners had also filed an application for rectification on 22nd October 2024. According to the respondents since the rectification application was beyond the time prescribed, by an order dated 28th October 2024 the proper officer had dis-allowed such application with a direction upon the petitioner to file an appeal.

4. Pursuant to the aforesaid, the petitioners had filed an appeal along with the pre-deposit as is required for maintaining such appeal. Such fact would corroborate from the Form GST APL – 02 dated 22nd January 2025. The appellate authority has, however, chosen to reject the appeal by the order impugned on the ground of limitation.

5. Considering the fact that the scheme of the said Act provides for multi-tiered adjudication process, ordinarily this Court is loath to accept a challenge to such order.

However, in the instant case, the petitioners have a remedy before the appellate tribunal and the appellate tribunal is yet to be constituted.

6. Ordinarily, therefor, this matter would require consideration on merit by this Court. However, taking into consideration the fact that the petitioners had filed a rectification application, seeking correction of factual and computation issues which came to be rejected by order dated 28th October, 2024 with a direction upon the petitioners to file an appeal and despite the petitioners filing the appeal therefrom, the same had been rejected and noting that the department is far more equipped to access the records of the case which are available on the portal, I am of the view that at the first instance the adjudicatory process must be completed before the departmental authorities prior to the petitioner approaching the appellate authority.

7. In view thereof, while setting aside the order dated 25th February, 2025 passed by the appellate authority and the order dated 28th October, 2024 passed by the proper officer, I remand the matter back to the proper officer being the respondent no. 2 for reconsideration of the petitioner's rectification application.

8. The proper officer is directed to hear out such application preferably within a period of 6 weeks from the date of communication of this order upon providing an opportunity of personal hearing to the petitioner.

9. Since this Court has not gone into the merits of the case and has not called for affidavits, the allegations made

in the writ petition are deemed not to have been admitted by the respondents.

10. With the above observations and directions, the writ petition stands disposed of.

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

(Raja Basu Chowdhury, J.)