M/L 45
14.05.2025
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10597 of 2024

Gaurav Agarwal
Versus
The Assistant Commissioner, State Tax
New Market Charge, & Ors.

Mr. Parag Kothari
Ms. Paramita Ghoshal
... For the petitioner.

Mr. Anirban Ray
Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Tanoy Chakraborty
Mr. D. Sahu
... For the State.

1. Challenging the order dated 11th December, 2023 rejecting the appeal under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") whereby the Appellate Authority refused to entertain the same, *inter alia*, on the ground that the petitioner had given a declaration that the petitioner shall not file appeal from the refund application in Form GST RFD 01 dated 17th August, 2021 while making the claim in form GSTPMT-3. Delay in preferring the appeal was also one of the grounds for rejection of the appeal.

2. Records would reveal that the petitioner had filed an application in Form GST RFD 01 under Section 54 of

the said Act on 17th August, 2021, seeking refund of Input Tax Credit on export of goods and services without payment of integrated tax amounting to Rs.97,45,520/- for the tax period from January, 2020 to March, 2020. Unfortunately, before the refund application could be disposed of, the registration of the petitioner was cancelled by the respondent no.1 on 4th October, 2021 with effect from 25th October, 2019 on the basis of a finding that the petitioner was non-existent at the declared place of business. Records would reveal that on the very next date, the petitioner's refund application was rejected by a refund rejection order in Form GST RFD 06 dated 5th October, 2021 under Section 54 of the said Act on the ground that the petitioner's registration was cancelled. According to the petitioner, while rejecting the petitioner's refund application no opportunity of hearing was provided, no show cause notice as is required to be issued in RFD 08 in terms of Rule 92(3) of the CGST Rules, 2017 (hereinafter referred to as the "said Rules") prior to rejection of refund application was issued. The petitioner had thereafter filed an appeal challenging the order of cancellation of registration on 20th October, 2021. As would appear from the statement made in the writ petition that the registration of the petitioner under the said Act was restored with effect from 25th

October, 2019 in terms of the order passed by the Senior Joint Commissioner, State Tax, Kolkata South Circle on 28th March, 2022. Immediately upon restoration of the petitioner's registration, the petitioner approached the respondent no.1 for refund whereupon the petitioner claims that he had been instructed to file an application in Form PMT 03 and accordingly on 15th June, 2022, the petitioner had filed such application. Unfortunately, despite the above, the amount of Rs.97,45,520/- was not credited to the petitioner's credit ledger. The petitioner appears to have lodged a grievance with the public grievance officer and the grievance cell, unfortunately, no steps were taken by the respondents. The petitioner also could not file a fresh application for refund in GST RFD 01 for the selfsame tax period January, 2020 to March, 2020 and in such circumstances had filed an appeal, but in the process as aforesaid, there was a delay of four and a half months. The said appeal filed by the petitioner had been rejected on 11th December, 2023 by *inter alia*, proceeding on the premise that since the petitioner had allegedly filed a declaration that he would not file any appeal with respect to the refund being Application No. ARN: AA190821030503H dated 17th August, 2021 while submitting Form GSTPMT-03, his appeal stood rejected.

3. Heard the learned advocates for the respective parties. It appears that the appellate authority had also rejected the appeal on the ground of delay. It is unfortunate, that the petitioner has been made to suffer for no fault of his own. At the first instance the respondents appears to have cancelled the petitioner's registration and immediately thereafter had proceeded to cancel the petitioner's refund application amounting to Rs.97,45,520/- even without a show-cause. Subsequently, at the instance of the petitioner when the petitioner's registration under the said Act was restored by an order dated 28th March, 2022 with effect from 25th October, 2019, ordinarily the petitioner's refund application ought to have been restored as well since, the only ground for rejection of such application was cancellation of the petitioner's registration. The matter did not stop there. The petitioner had to run from pillar to post. Despite the above the petitioner did not succeed, even after filing of an application in Form GST PMT 03 by providing an undertaking that the petitioner shall not file an appeal from the order to be passed thereon. When the respondents did not take any steps in the matter and did not credit the aforesaid amount, the petitioner approached the appellate authority from the original order of rejection. The appellate authority appears to have dealt with the matter in a reckless manner and appears to have

rejected the appeal on the ground that the petitioner had given an undertaking while filing Form PMT 03 that he shall not prefer an appeal from the determination to be made. The conduct of the concerned respondent is deplorable to say the least.

4. At this stage, Mr. Chakraborty, learned advocate appears on behalf of the respondents and would submit that the matter may be remanded back to the appellate authority.

5. Having regard thereto and considering the facts of this case, I set aside the order dated 11^{th} December, 2023 passed by the appellate authority and remand the matter back to the appellate authority for a fresh hearing on merits. The matter shall not be dealt with the officer concerned who had dealt the matter previously. The appellate authority shall hear out and dispose of the appeal as expeditiously as possible, preferably within a period of three weeks from the date of communication of this order by passing a reasoned order and upon giving an opportunity of hearing to the petitioner.

6. Needless to note, if the appellate authority is of the view that the petitioner is entitled to the benefit of refund, such refund shall carry an appropriate statutory interest and consequent thereupon the entire amount of refund alongwith interest shall be credited

to the petitioner’s credit ledger forthwith.

7. With the above observations and directions the writ petition is disposed of.

8. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)