24.09.2025
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Sl. No. 01
Ct. No. 05

WPA 11199 of 2025

Sanjoy Biswas under the name and style of M/s. Proyajanee
-Versus-
State of West Bengal & ors.

Mr. Avra Mazumder
Ms. Alisha Das
Ms. Elina Dey
....for the petitioner
Mr. Bhaskar Prasad Banerjee
Mr. Tapan Bhanja
..... for the respondent CGST & CX
Mr. N. Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal
..... for the State

1. Challenging an order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) dated 11th December, 2023 for the tax period of 2017-2018, an appeal was filed before the appellate authority under Section 107 of the said Act. Since according to the petitioner, a sum in excess of 10% of the demand to the extent of Rs. 1,40,604/- had already been paid by the petitioner in form DRC 03, the petitioner while maintaining the appeal insisted that such sum should be treated as a pre deposit. The appellate authority, however, by recording that the payment made in DRC 03 was dated 18th July, 2022 whereas the show cause notice in the instant case was 22nd September, 2023 and 18th December, 2023 and having regard thereto, did not treat the said deposit as a pre deposit. Consequentially, the appeal stood rejected for non-compliance of Section 107(6) of the said Act. Subsequently, after the appeal was dismissed, the petitioner having realized that the petitioner was required to make payment of 10% of the disputed amount of tax, had made such deposit on 27th March, 2025 and by letter dated 28th March, 2025 had requested the appellate authority to reconsider the above issue in the light of the deposit made by the petitioner on 27th March, 2025.

2. Ms. Das learned advocate representing the petitioner led by Mr. Mazumder, learned advocate would submit that the petitioner should not be penalized for an error in computation and misunderstanding. According to her, since the appellate authority is not available, the above writ petition has been filed.

3. Mr. Banerjee, learned advocate appears on behalf of the respondents.

4. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I am of the view that prima facie, there is no irregularity in the order passed by the appellate authority in rejecting the appeal on the ground of non-compliance of the pre deposit since the payment that was made by the petitioner was prior to issuance of the show case which was given due credit and such sum had already been adjusted. Thus, once, the petitioner disputed the demand, the petitioner was obliged to make payment of 10% of the amount of tax in dispute which had admittedly not been done in this case and accordingly resulted in rejection of the appeal. However, the petitioner upon realizing the mistake has subsequently made payment of the 10% of the tax in dispute through form GST DRC 03 on 27th March, 2025.

5. Having regard to such payment being made by the petitioner and noting that the appellate tribunal is yet to be constituted, I am of the view, it shall be prudent to remand the matter back to the appellate authority with the direction upon the appellate authority to decide the aforesaid appeal in accordance with law upon giving an opportunity of hearing to the petitioner.

6. The appellate authority shall test out the payment made by the petitioner for maintaining the appeal effected vide form DRC 03 dated 27th March, 2025.

(Raja Basu Chowdhury, J.)