09.09.2025
Item No.12
Ct. No.01
RP

MAT 1239 of 2025
+
IA No.CAN 1 of 2025, CAN 2 of 2025

Shailesh Kumar Gupta
VS
The Assistant Commissioner of State Tax, Chandni Chawk and Princep Street Charge & Ors.

Mr. Sandip Choraria
Mr. Akash Chakraborty
Mr. Rishav Manna
....For the Appellant

Mr. Nilotpal Chatterjee
Mr. Saptak Sanyal
...For State

Ms. Sanjukta Gupta
...For UOI

1. There is delay of 290 days in preferring the appeal. We have perused the affidavit filed in support of the application and find that the reasons given by the appellant is accepted. Accordingly, delay is condoned and CAN 1 of 2025 is allowed.

2. The appellant filed the writ petition, being WPA 19389 of 2024, challenging the order dated 23rd April, 2024 passed under Section 75(4) of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act"). Learned Single Bench was of the view that the appellant should avail the alternate remedy and granted time to file the statutory appeal.

Aggrieved by such direction, the appellant has preferred the present intra-Court appeal.

3. We have heard the learned advocates for the parties. We have carefully examined the annexures to the stay application and find that at the first instance certain discrepancies were alleged against the appellant/assessee and a notice communicating the discrepancies was issued on 25.07.2023. It is admitted by the department that the assessee had furnished relevant details and the authorized representative of the appellant had also appeared before the concerned officer on several dates. Therefore, the next step would be either to accept the explanation offered by the assessee to the discrepancies or to proceed further to issue show cause notice under Section 73(1) of the said Act. In the event, the authority is not satisfied with the explanation offered to the discrepancies, such explanation may be dealt with in the show cause notice and a prima facie view has to be recorded as to why the assessee is liable to reverse the ITC or liable to pay tax, penalty and interest etc. In the instant case we find from the show cause notice issued under Section 73(1) of the said Act as contained in Annexure P3 is that what the authority has done is that the concerned officer has extracted the contents

of the discrepancy notice and some of which are said to have been reconciled and accepted. However, in respect of certain discrepancies the authority has not accepted the explanation of the assessee which has led to an order being passed directing reversal of the alleged excess ITC.

4. The Statute, namely, Sub-section 4 of Section 75 of the said Act mandates a personal hearing to be granted to the assessee. This has not been done and, therefore, the matter requires to be remanded back to the Adjudicating Authority for a fresh decision. Since certain discrepancies have been explained by the assessee and accepted by the department, it would be in the interest of the Department as well as the assesse to issue a fresh show cause notice pointing out such other discrepancies, which are not accepted by the department and the appellant shall be granted an opportunity to submit his reply within three weeks from the date on which fresh show cause is issued and thereafter the appropriate authority shall afford an opportunity of personal hearing to the authorized representative of the appellant and redo the assessment and pass a fresh order on merit and in accordance with law.

5. With the above directions, the appeal and the connected application are disposed of.

6. Urgent Photostat certified copy of the order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]