N.22Sl

151/CL
24.11.25
Sl-06
Ct.551
(S.R.)

WPA 19071 of 2025

RM Packaging Pvt. Ltd.
v.
Assistant Commissioner of Revenue State Tax & Ors.

Mr. Piyal Gupta … for the petitioner.

Mr. S.K. Dutta
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal … for the State.

1. Affidavit of service filed today be kept with the record.
2. The petitioner is aggrieved by an order dated February 17, 2025 passed by the appellate authority of the WBGST Act, 2017/CGST Act, 2017 (hereinafter referred to as the 'said Act of 2017') whereby the petitioner's appeal against the order dated April 29, 2024 passed under Section 73 of the said Act of 2017.
3. It is petitioner's case that during pendency of the petitioner's appeal the Amnesty Scheme of 2024 was subsisting and the petitioner was desirous of availing the benefits of the said scheme. The petitioner, accordingly, applied before the appellate authority and sought for adjournment of the appeal on the ground that the petitioner was desirous of settling the dispute under the Amnesty Scheme.
4. It is submitted that the Amnesty Scheme was to

subsist till March 31, 2025. However, the appeal itself was dismissed by the Appellate Authority on February 17, 2025 with the following observation: -

> *"As a matter of fact, he has been asked to withdraw the appeal petition and opt under amnesty scheme, u/s.128A, before the concerned jurisdictional charge officer.*
>
> *Accordingly the case was further adjourned and the appellant was asked to withdraw the said appeal case as early as possible.*
>
> *However, till date, the appellant have not withdrawn the case from the portal.*
>
> *So, in view of the fact stated herein above, I do not wish to go into the merit of the case.*
>
> *Hence, so as to enable the appellant to exercise option under amnesty scheme, the instant appeal filed is rejected ex parte and the order of the proper officer has been upheld.*
>
> *Under the circumstances and in view of the above observations, I do not wish to intervene in the order of the ld proper officer. Thus, the order of the ld proper officer is upheld and appeal is rejected.*
>
> *The instant appeal application is disposed of accordingly with the rejection of the same in the common portal."*

5. Mr. Gupta, learned advocate appearing for the petitioner submits that the petitioner could not avail the Amnesty Scheme as it was unable to arrange the requisite funds therefor. It is submitted that although withdrawal of the appeal was a condition precedent for the purpose of availing the benefits of the Amnesty Scheme, yet, even if the

petitioner was unable to withdraw the appeal and avail the Amnesty Scheme for the reason that the petitioner was unable to arrange funds required for settling the matter under the Amnesty Scheme, the appellate authority could not have dismissed the petitioner's appeal without hearing the same on merits.

6. Mr. Chakraborty, learned advocate appearing for the respondents submits that the authority passed the order impugned for the benefit of the petitioner only so that the petitioner could avail the benefit of Amnesty Scheme.

7. Having heard the learned advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the order impugned dated February 17, 2025 cannot be sustained. If the precondition for availing the Amnesty Scheme was withdrawal of the appeal filed by the petitioner, it was for the petitioner to exercise the option of withdrawal of the appeal and it was not open to the appellate authority to *suo motu* dismiss the appeal in absence of any prayer for withdrawal.

8. Such a step could not have been taken by the appellate authority even with a view to help the petitioner for availing the Amnesty Scheme. There is a gulf of difference between withdrawal of an appeal

(or a lis) by a party and dismissal thereof by an adjudicating authority on any ground other than prayer for withdrawal thereof by the party concerned.

9. In case, the appellate authority wished to dispose of the petitioner's appeal it was incumbent on the appellate authority to issue notice on the petitioner and call the petitioner for hearing and then take a reasoned decision on the appeal. In the case at hand, the appellate authority has hit the petitioner with a double whammy. Since the appeal has been dismissed and has not been withdrawn, therefore the petitioner would not be entitled to avail benefits of Amnesty Scheme and at the same time the petitioner has also lost the opportunity to press its appeal on merits. The order impugned, therefore, deserves interference.

10. In such view of the matter, the order impugned dated February 17, 2025 is set aside and the matter is remanded to the file of the appellate authority for taking a fresh decision in the matter upon hearing the appeal on merits, in accordance with law.

11. WPA 19071 of 2025 stands disposed of with the above observations. No costs.

12. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)