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jks 06.03.2025

WPA 19265 of 2024

Gurmit Singh
Vs.
The Sales Tax Officer Asansol Charge & Ors.
(Assigned)

Mr. Rita Mukherjee
Mr. Abhijat Das
… … for the Petitioner
Mr. Anirban Ray
Mr. Md. T. M. Siddiqui
Mr. T. Chakraborty
Mr. Saptak Sanyal
… … for the State

Learned counsel appearing for the petitioner submits that the petitioner received a draft assessment order on 30th June, 2017 and filed an appeal before the respondent no.3 on 21st September, 2017 against the order of assessment.

At the time of filing the appeal, the petitioner was unable to pay 15 per cent of the tax in dispute, as required under the Statute. Consequently, the respondent no.3 by an order dated 31st October, 2017 did not entertain the petitioner's appeal. Thereafter, the petitioner was advised by his Lawyer to file an application before the Hon'ble High Court at Calcutta being WP No.2231 (W) of 2018 challegning the vires of the second proviso to Section 84 of the VAT Act, which mandated that no appeal shall be entertained unless 15 per cent of the disputed tax was paid. The said writ petition being WP No.2231(W) of 2018 was disposed of by an order dated 2nd July, 2018 wherein the Hon'ble High Court was pleased to uphold the constitutional validity of the second proviso to Section 84, relying on its earlier decision in WP No. 1211(W) of 2016 (M/s. Vatech Wabag Limited Vs. Deputy Commissioner of Sales Tax, Midnapur Charge & Ors.). It was observed in the order that since the petitioner was similarly situated to that of M/s. Vatech Wabag Limited Vs. Deputy Commissioner of Sales Tax, Midnapur Charge & Ors., it would be appropriate to permit the petitioner to prefer an appeal against the order of assessment within four weeks from the date of the order, subject to the petitioner fulfilling all other conditions for preferring an appeal in accordance with law. In the event the appeal is preferred within four (4) weeks from the date, the department would not raise an objection on the ground of limitation, and the appellate authority would treat such appeal as filed within the period of limitation.

The learned counsel further submits that the petitioner's previous advocate, who appeared in the matter, did not intimate the petitioner about the order dated 2nd July, 2018 of the Hon'ble High Court at Calcutta. As a result, the petitioner remained under the impression that the matter was still pending. However, on 22nd January, 2024, the petitioner, for the first time received an email from the office of the Commissioner, Commercial Taxes West Bengal inquiring about the present status of the said assessment case and whether the outstanding demand had been paid, or was pending before the Board/ Hon'ble Tribunal/ Hon'ble High Court or Supreme Court.

On receipt of the said email the petitioner made several attempts to contact the learned Advocate who filed the writ petition being WP No.2231 (W) of 2018 to ascertain the status of the case. Since the petitioner could not get any updates on the matter or the result of the case and as the disputed demand was pending against the petitioner, finding no other alternative, the petitioner contacted another advocate to enquire about the case in the High Court. Upon doing so, he learned that the said writ petition had been disposed of on 2nd July, 2018 and his contentions were rejected but a further opportunity to comply with the legal provisions for filing an appeal within four weeks was granted. The petitioner has already filed an appeal along with the pre-deposit of 15 per cent of the disputed tax, amounting to Rs.68,14,980/- and prays for an early hearing of the same before the appropriate authority.

Heard learned counsel appearing for the respondent authorities.

As the petitioner has already preferred an appeal and deposited Rs.68,14,980/- towards the disputed tax, respondent authorities being respondent nos.2 and 3 are requested to entertain the appeal filed by the petitioner and to dispose of the same within eight weeks from date of this order.

With the above direction, the writ petition is disposed of.

No order as to costs.

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

(Rajarshi Bharadwaj, J.)