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151/CL
02.12.25
Sl-19
Ct.551
(S.R.)

**WPA 20961 of 2025**

**Arup Kumar Chatterjee**
**v.**
**Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal) & Ors.**

Mr. Akshat Agarwal
Ms. Doyel Dey ... for the petitioner.

Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ... for the State.

1. Affidavit of service as filed today on behalf of the petitioner is taken on record.
2. The petitioner seeks leave to file a supplementary affidavit. Such leave is granted and the supplementary affidavit is taken on record. A copy thereof has already been served upon the learned advocate for the respondents.
3. The petitioner is aggrieved by an order dated May 11, 2023 passed by the appellate authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 (hereinafter referred to as the 'said Act of 2017') whereby the petitioner's appeal against an order dated November 16, 2022 passed under Section 74 of the said Act of 2017 has been dismissed on the ground of non-compliance with the mandatory condition of statutory pre-deposit.

4. It is submitted that the petitioner had made an application before the appellate authority seeking waiver of the statutory pre-deposit on the ground that the demand was illegal and that appellate authority has dismissed the petitioner’s appeal for want of statutory pre-deposit without hearing the petitioner on his application for waiver.
5. It is further submitted that after the order impugned herein being passed, the respondent GST authorities have proceeded to recover the entire tax in dispute. Mr. Agarwal submits since the entire disputed tax has been recovered, the condition of statutory pre-deposit stands satisfied and therefore the petitioner should be afforded an opportunity of presenting its appeal on merits.
6. As regards the delay occasioned in approaching this Court, it is submitted that the petitioner was in penury due to recovery of substantial sums in respect of several years and that the petitioner was also waiting for the Appellate Tribunal under Section 112 of the said Act of 2017 to be functional, however, since the wait got unduly prolonged, the petitioner had to approach this Court by way of the present writ petition. Apart from the reasons mentioned in the writ petition,

a supplementary affidavit has also been filed by the petitioner explaining the reasons for delay occasioned by the petitioner in approaching this Court.

7. Heard learned Advocates appearing for the respective parties and considered the material on record.

8. The appellate authority under Section 107 of the said Act of 2017 has no power to waive the mandatory condition of pre-deposit and in such view of the matter, the order impugned herein cannot be faulted.

9. However, having regard to the fact that the petitioner could not press its appeal before the appellate authority for want of compliance with the mandatory condition of pre-deposit in terms of Section 107(6) of the said Act of 2017 and the fact that the final fact finding authority i.e. the Appellate Tribunal has not yet become functional, this Court is of the view that if the petitioner is not afforded an opportunity of pressing his appeal before the appellate authority on merits. Accordingly the order impugned dated May 11, 2023 passed by the appellate authority is set aside and the matter is remanded to the appellate authority for considering the appeal on merits.

10. It is clarified that since an amount more than 10% of the disputed tax has already been recovered and the precondition of putting in the pre-deposit equivalent to 10% of the disputed tax in terms of the Section 107(6) stands satisfied, therefore the appellate authority shall proceed to hear the petitioner's appeal on merits, without requiring the petitioner to make any further pre-deposit. It is also clarified that since the petitioner has approached this Court much later to the date when the disputed tax was recovered, no order of refund is being made at present.

11. WPA 20961 of 2025 stands disposed of with the above observations.

12. There shall, however, be no order as to costs.

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

**(Om Narayan Rai, J.)**