WPA 20972 of 2025

08.12.25
Sl-19
Ct.551
(S.R.)

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. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal
Mr. S. Chatterjee ... for the State.

1. Affidavit of service filed today is taken on record.
2. The petitioner files a supplementary affidavit. The same is taken on record. Copy thereof has already been served upon the learned advocate appearing for the respondents.
3. The writ petitioner assails an order dated May 12, 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 has been dismissed on the ground of non-compliance with the provisions of statutory pre-deposit under Section 107(6) of the said Act of 2017.
4. The petitioner has sought to explain the delay occasioned by him in approaching this Court by submitting that since substantial sums were

recovered from the petitioner pursuant to the demand order dated November 16, 2022 passed under Section 74 of the said Act of 2017, the petitioner was in dire financial straits. It has been submitted that the petitioner was also waiting for appellate tribunal under Section 112 of the said Act of 2017 to be functional but since the said tribunal did not get functional despite passage of a long time, the petitioner had to approach this Court by way of the present writ petition.

5. Heard learned advocates appearing for the respective parties and considered the material on record.

6. The appellate authority has dismissed the petitioner's appeal on the ground of non-compliance with the condition of statutory pre-deposit in terms of Section 107(6) of the said Act of 2017. 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.

7. However, having regard to the fact that the petitioner could not press his 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, the petitioner shall lose a forum. In that view of the matter this Court is inclined to grant the petitioner one more opportunity to avail the appellate remedy.

8. Since, it is not disputed that a sum of Rs.19,27,508/- has already been recovered from the petitioner on account of SGST on the strength of the adjudication order dated November 16, 2022, (which is also evident from the copy of the electronic credit ledger appended as Annexure P6 at page 78 of the writ petition), this Court is of the view that if the petitioner puts in an amount equivalent to 10% of the balance amount of tax yet to be recovered from the petitioner in terms of the adjudication order dated November 16, 2022, the appellate authority should hear the petitioner's appeal on merits, without insisting on any further deposit.

9. Accordingly, it is ordered that if the petitioner deposits a sum equivalent to 10% of the balance amount of tax (i.e. remainder after recovery of the sum of Rs.19,27,508/- on the basis of the order

dated November 16, 2022 passed under Section 74 of the said Act of 2017) with the respondent GST authorities and furnishes proof of such deposit with the appellate authority within two weeks from date, the appellate authority shall hear the petitioner's appeal on merits and dispose of the same, in accordance with law. In such case, the order impugned dated May 12, 2023 shall be no effect and be treated as having been set aside.

10. WPA 20972 of 2025 stands disposed of with the above observations.

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

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

(Om Narayan Rai, J.)