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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 25558 of 2024

Shaikh Aslam Ali alias Sk Ali Aslam
Versus
Deputy Commissioner of State Tax,
Diamond Harbour Charge & Ors.

Mr. Avra Mazumder
Mr. Suman Bhowmik
Ms. Alisha Das
Ms. Elina Dey
Ms. Sreeja Mukherjee
… For the petitioner.

Mr. Tanoy Chakraborty
Mr. S. Sanyal
… For the State

1. The instant writ petition has been filed, inter alia, challenging the order dated 16th November, 2022, passed by the proper officer under Section 74 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act").

2. Having heard the learned advocates appearing for the respective parties I find that admittedly, the time to prefer an appeal has expired. Though certain explanation for the delay has been offered, such explanation, in my view, may not be entirely adequate.

3. Further, I find that an appellate remedy has been provided from an order passed under Section 74 of the said Act. No attempt has been made by the petitioner to

avail such appellate remedy. Even after the petitioner's bank account was attached, no steps were taken to prefer an appeal. It is the petitioner's contention that a sum of Rs.2,19,35,098/- has already been recovered from the petitioner's bank account against the demand raised by the respondents in furtherance to the order passed under Section 74 of the said Act dated 16th November, 2022 in respect of the tax period April, 2021 to January, 2022.

4. In the light of the above, in my view, though there is no scope to entertain the writ petition, however, at the same time the petitioner should not be rendered remediless and the determination already made ought to be tested, by the appellate authority, especially when at present the appellate tribunal is yet to be constituted

5. Thus, in the event, the petitioner prefers an appeal within a period of four weeks from date with the appellate authority, the appellate authority upon ascertaining that a sum in excess of 20 per cent of the amount in dispute has already been recovered from the petitioner or alternatively by seeking for a pre-deposit of 10 percent of the tax in dispute, shall hear out the appeal on merits in accordance with law.

6. Since, the petitioner has approached this Court belatedly, it shall also be prudent to direct the petitioner to make payment of cost of Rs.50,000/- to be paid by the petitioner to the High Court Legal Services Committee.

7. It is made clear that upon payments of costs as aforesaid the petitioner shall be at liberty to seek release of the order of attachment from the appellate authority, provided an amount in excess of 10 percent of the Tax in dispute is either paid or recovered and the appeal is filed within the time provided herein.

8. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)