

21.01.2025
Item No.6
gd/ssd

FMA/135/2025
PIONEER COOPERATIVE CAR PARKING
SERVICING AND CONSTRUCTIONS SOCIETY LIMITED
VS
UNION OF INDIA AND ORS.
IA NO: CAN/1/2024

Mr. Vinay Kumar Shraff,
Ms. Priya Sarah Paul,
Mr. Dev Kr. Agarwal
..for the Appellant.

Md. T.M. Siddique,
Mr. Tanoy Chakraborty,
Mr. S. Sanyal,
Mr. S. Shaw
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order dated 20th December, 2024 in WPA 28649 of 2024 by which the writ petition filed challenging an order of adjudication passed under Section 73 of the CGST/WBGST Act, 2017 was not entertained and the appellant was relegated to file an appeal as provided under Section 107 of the GST Act.

2. After elaborately hearing the learned advocate for the appellant and the learned senior advocate appearing for the State, we find that several disputed questions of fact have to be gone into which cannot be adjudicated in a writ petition based on affidavits.

3. Therefore, the learned Single Bench was right in relegating the appellant to file the statutory appeal.

4. Mr. Shraff, learned advocate appearing for the appellant submitted that one of the prayers sought for in the writ petition is to declare Rule 36(4) of the CGST Rules, 2017 as unconstitutional.

5. It is no doubt true that such a prayer cannot be made to the appellate authority.

6. Therefore, we leave it open to the appellant to challenge the Rule by way of a separate writ petition and we are not inclined to interfere with the order passed by the learned Single Bench relegating the appellant to file a statutory appeal.

7. If the appellant files the statutory appeal within a period of 30 days from the date of receipt of the server copy of this order, the appellate authority shall not reject the appeal on the ground of limitation but to proceed to take a decision in accordance with law.

8. Accordingly, the appeal stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

