07.07.2025
ML
Item No. 02
Ct.-05
Sayandeep

WPA 31087 of 2024

Somenath Ghosh
versus
State of West Bengal & Ors.

Mr. Mainak Bose
Mr. Neeraj Kumar Pandey
Mr. S.M. Akhter

....For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...For the State

1. Challenging the show-cause notice dated 28th October, 2024 issued under Section 73 (1) of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), the instant writ petition has been filed. On 19th February, 2024 Mr. Akhter, learned advocate representing the petitioner led by Mr. Mainak Bose, learned senior advocate had made out a case that having regard to the provisions contained in Section 73 sub-Section 10 of the said Act, there was no scope for the proper officer to proceed with the show-cause in respect of the financial year 2020-2021. According to him ordinarily, the time to file an annual return electronically as specified under Section 44 in form GSTR 9 was required to be filed by the 31st day of December following the end of the financial year for which the return is filed. Since, Section 73(10) of the said Act only permits issuance of any order within

three years from the due date for furnishing the annual return for the financial year to which the tax has not been paid or has been short paid or ITC wrongly availed or utilized or within three years from the erroneous refund, the aforesaid show-cause which was issued on 28th October, 2024 being less than three months from the expiry of three years from the due date of filing of the annual return in terms of Section 73(2) of the said Act, the show-cause was a non starter. It is, however, the respondents' contention that having regard to the provisions contained in sub-Rule 1A of Rule 80 of the WBGST/CGST Rules, 2017 (hereinafter referred to as the said Rules) which has been inserted in the said Rules with effect from 29th December, 2021, the time for issuing the show-cause notice and the consequential order under Section 73(10) automatically stands extended till 28th February, 2022. Having regard thereto, this Court had directed the respondents to ascertain whether any order under Section 73(9) of the said Act has been passed.

2. Today, Mr. Siddiqui, learned Additional Government Pleader by placing before this Court the order under Section 73 of the said Act dated 20th February, 2025 would submit that the aforesaid order has already been passed within the period of three years consequent upon the period for filing the annual

returns for the financial year 2020-21 being extended in terms of Rule 80 (1A) of the said Rules and the remedy available to the petitioner is to prefer an appeal therefrom.

3. Heard the learned advocates appearing for the respective parties and considered the materials on record. Prima facie, it would transpire that though ordinarily a show-cause notice having regard to Section 73(2) of the said Act is required to be issued at least three months prior to the expiry of the time limit specified in sub-Section 10 of Section 73 for issuance of such order, however, in the instant case, I find that for the relevant assessment year that is 2020-21, having regard to the insertion of Rule 80 (1A), the time to file annual returns having been extended up to 28th February, 2022 the show-cause notice or the order passed thereon cannot be said to be irregular. Although, Mr. Akhter would submit that the petitioner was not required to file annual return, however, I find that having regard to the observation made hereinabove and noting that an order under Section 73(9) has already been passed on 20th February, 2025 which appears to be within the time specified, having regard to the insertion of Rule 80 (1A) of the said Rules, I am of the view, that there is no scope to entertain writ petition on the jurisdictional issue.

4. The petitioner shall however be at liberty to challenge the order dated 20th February, 2025 before appropriate forum in accordance with law. At this stage, Mr. Akhter would submit that since the matter was pending before this Court, the petitioner did not prefer an appeal and in the interregnum, the time to prefer the appeal has expired.

5. Considering the pendency of the writ petition and the issues raised herein, I am of the view that in the event, the petitioner prefers an appeal from the order dated 20th February, 2025 within the period of 4 weeks from date, the appellate authority shall having regard to the observations made herein, hear out and dispose of the appeal on merits, subject to compliance of all other formalities by the petitioner.

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

(Raja Basu Chowdhury, J.)