IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **17.12.25**

Item No.1&2 Sws.M

WPA 7675 of 2020
with
CAN 2 of 2025

EMTA Coal Limited & Anr.
vs.
Union of India & Ors.

with

WPA 11075 of 2021
with
CAN 1 of 2025

EMTA Coal Limited & Anr.
vs.
Union of India & Ors.

Mr. Saurabh Bagaria
Mr. Sandip Agarwal
Mr. Indranil Banerjee
Mr. Tanay Agarwal
Mr. Priyanshu Agarwal
...for the petitioners

Mr. Vipul Kundalia, Sr. Adv.
Mr. Bhaskar Prasad Banerjee
Mr. Tapan Bhanja
...for the respondent Nos. 3,4 & 5

In Re: **CAN 2 of 2025**
in
WPA 7675 of 2020

1. Affidavit-in-opposition filed on behalf of the respondent Nos. 3, 4 and 5 is taken on record.
2. CAN 2 of 2025 is an application seeking *inter alia* the following direction:

> *"a. Dispose off the instant writ petition without prejudice to the petitioners' rights and contentions, directing the learned*

CESTAT, Kolkata to admit, register, and hear the Petitioners' appeal under Section 86 of the Finance Act, 1994 against the purported ORDER-IN-ORIGINAL BEARING NO. 08-09/COMMR/ST-II/KOL/2017-18 DATED 21.06.2017 without insisting upon pre-deposit of 7.5% of the impugned demand for service tax, in view of the exceptional facts and circumstances of the present case"

3. The petitioners are thus desirous of availing the alternative remedy of appeal before the Appellate Tribunal i.e. CESTAT upon withdrawing the present writ application.

4. There is a prayer for a direction upon CESTAT to hear out the petitioners' appeal "without insisting upon pre-deposit of 7.5% of the impugned demand for service tax" as would be apparent from the prayer extracted hereinabove, however, Mr. Bagaria, learned advocate appearing for the petitioners, submits on instructions that the petitioners are not pressing the said prayer for the CESTAT to hear the petitioners' proposed appeal without insisting upon pre-deposit of 7.5% of the impugned demand. He submits that the petitioners would be in a position to meet the condition of statutory pre-deposit, provided three months' time is granted to them. He further submits

that the petitioners would file the appeal within two weeks from date.

5. In such view of the matter, this writ petition is permitted to be withdrawn while observing as follows:
    a) The petitioners shall be entitled to file appeal within two weeks from date.
    b) Since this writ petition has been pending since 2020, this Court deems it proper to allow the petitioners an opportunity to make the statutory pre-deposit within a period of three months from date. However, it is clarified that CESTAT shall proceed to hear the petitioners' only upon the condition of pre-deposit being met by the petitioners within the time specified hereinabove. (i.e. three months from date).
6. As requested by the parties, it is clarified that this Court has not gone into the merits of the matter and all points are left open to be urged before CESTAT and be decided by the CESTAT in accordance with law.
7. With the aforesaid observations, WPA 7675 of 2020 stands "dismissed as withdrawn" with liberty to the petitioners to file appeal within two weeks and meet with the statutory pre-deposit condition within three months from date as indicated hereinabove.
8. CAN 2 of 2025 stands disposed of accordingly. No costs.

In Re: **CAN 1 of 2025**
in
WPA 11075 of 2021

9. Affidavit-in-opposition filed on behalf of the respondent Nos. 3, 4 and 5 is taken on record.

10. CAN 1 of 2025 is an application seeking withdrawal of WPA 11075 of 2021 with liberty to the petitioners to prefer appeal before the appellate authority under Section 85 of the Finance Act, 1994 against the three orders in original dated January 27, 2021, January 22, 2021 and December 14, 2020 which have been impugned in the present writ petition.

11. In view of such prayer as made in the said application, WPA 11075 of 2021 is dismissed as withdrawn with liberty to the petitioners to prefer appeals against the three orders aforesaid impugned in the present writ petition within a period of two weeks from date.

12. CAN 1 of 2025 stands disposed of accordingly. No costs.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)