Court No. 2
(1490)

04.04.2025
(JPD 34)

(S. Banerjee)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side

WPA 602 of 2025

Kamakhya Construction and Company
Vs.
The Commissioner of State Goods and Service Taxes & Ors.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Mr. Ved Rai
Mr. Vivek Saha

... for the petitioner

Mr. Joyjit Choudhury, Ld. AAG
Ms. Rima Sarkar

... for the State

This application under Article 226 of the Constitution of India is directed against the order dated December 15, 2023 passed by the Assistant Commissioner, Cooch Behar. By the said order it was held that the petitioner is liable to pay interest under Section 50(1) of the WBGST Act, 2017 and CGST Act, 2017 for intervening period between the date of order and date of payment of the tax. The petitioner was directed to make payment of interest and penalty within the date mentioned in the said order.

Petitioner seeks to rely upon the Notification dated 16.08.2017 in support of its claim that the petitioner is not liable to pay GST with regard to majority of the items of work.

Mr. Ghosh, learned advocate for the petitioner submits that the petitioner is a partnership firm and the partner of the firm who was looking after the affairs of the firm with regard to indirect tax matters, was seriously ill at the relevant point of time for which the petitioner was not represented before the adjudicating authority on the date fixed for hearing. He submits that there is a dispute as to the bifurcation of the tax to be levied under VAT Act and the GST Act for the relevant period which was the subject matter of adjudication. He also submits that the adjudicating authority lacked jurisdiction to pass the order of adjudication.

The learned Additional Advocate General, assisted by Ms. Sarkar, seriously disputed the aforesaid submission of Mr. Ghosh. He submits that notice of hearing was duly served upon the petitioner but the petitioner chose not to be represented at the time of hearing. He submits that the adjudicating authority after taking into consideration the relevant materials arrived at a final conclusion. He further submits that the order impugned in this writ petition is an appellable order and the petitioner has not preferred any appeal but has approached the writ Court after expiry of the period of limitation for preferring such appeal.

It is not in dispute that the order impugned in the writ petition is an appealable order but the fact remains that the order was an ex parte order and the petitioner could not raise his points before the adjudicating authority for the reasons beyond his control. The issues raised by the petitioner in this writ petition requires an adjudication on facts as well, the same cannot be decided in this writ petition by way of exchange of affidavits.

This Court is, therefore, inclined to afford a last opportunity to the petitioner to present his case, both on facts as well as on law, before the adjudicating authority. Only for such reason this Court is inclined to interfere with the order impugned.

For such reason, the order impugned as set aside. Since the petitioner did not file any reply to the show-cause notice, this Court gives opportunity to the petitioner to file a reply to the show-cause notice on or before April 21, 2025.

The adjudicating authority is directed to decide the matter afresh and dispose of the proceeding in accordance with law by fixing a date of hearing after 21.04.2025 and by giving an opportunity of hearing to the petitioner or the authorized representative of the petitioner and by passing a reasoned order which shall be communicated to the petitioner immediately thereafter.

It is, however, made clear that this Court has not entered into the merits of the claim made by the petitioner including the applicability of the Notification dated 16.08.2017 and the Adjudicating Authority will be free to decide without being influenced by any observation made in this order.

(Hiranmay Bhattacharyya, J.)