15.05.2025
Court No.2
Item No.21
AJ

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION

WPA 1107 of 2025

Swapan Kumar Saha
-Vs-
Joint Commissioner, Commercial Taxes & State GST, Cooch Behar Charge & Ors.

Mr. Jagriti Mishra,
Ms. Ananya Bhattacharya,
Ms. Mrinmayee Das.
... for the Petitioner.
Mr. Subir Kumar Saha, Ld. A.G.P.,
Mr. Momenur Rahman.
.... for the State.

Affidavit of service filed on behalf of the petitioners be kept with the record.

The Assistant Commissioner, West Bengal Goods and Service Tax (WBGST), Cooch Behar, the respondent no. 2 herein, has issued a notice dated April 18, 2024 under Section 73(1) of the West Bengal Goods and Services Tax Act, 2017 (herein after referred to as the '**said Act of 2017**' in short) requiring the petitioner to show cause as to why he should not pay the amount specified in the said notice along with interest. The petitioner failed to reply to the said show cause.

The respondent no. 2, in terms of Section 73(9) of the said Act of 2017, determined the tax, interest and penalty and demanded the same.

The petitioner aggrieved by the said order of the respondent no. 2, had preferred an appeal under Section 107 of the said Act of 2017, being appeal case No. AD1907240070664.

The Joint Commissioner of Revenue, Commercial Taxes, Jalpaiguri Circle, by the impugned order dated November 18, 2024, had disposed of the said appeal by modifying the order of the Respondent no. 2.

Mr. Jagriti Mishra, learned advocate for the petitioner, submits that the petitioner is a government contractor and is engaged in the business of development, construction of public infrastructure and he had executed such works during the financial years 2017-18 as well as 2018-19 and had received the payment from various government and semi-government departments, but in those payments CGST and SGST were not included, in fact work orders were issued without updating the schedule of rates incorporating applicable GST, while preparing the Bill of Quantities (BOQ).

He further submits that the petitioner has no intention to evade tax, it was beyond the control of the petitioner to pay tax as he could not collect taxes from the government department/semi-government departments, whose works were executed under those work orders.

Mr. Mishra suggests that the Additional Chief Secretary, Finance Department, the respondent no. 3 herein is the appropriate authority to resolve the issue, he prays leave to submit an appropriate representation before the said respondent for redressal of his grievance, he also prays that till such time, the taxing authority may be directed not take any coercive steps.

Mr. Subir Kumar Saha, learned AGP, submits that the petitioner should meet the demand first and thereafter, may realize the same from the person on whose behalf he had executed the work.

Having heard the learned counsel for the parties and on perusal of the materials on record, it appears that the petitioner has executed works for the government and/or semi-government organizations. The said organizations since did not pay the demanded tax, the petitioner could not pay the same, therefore, the said government/semi-government organizations are required to meet the demand.

The respondent no. 3 since is the appropriate authority to resolve the issue, the petitioner is granted liberty to submit a detailed representation before the said respondent within a period of **ten days from the date**, if such representation is made within the said time, the said respondent shall consider the same and shall pass necessary order(s) within a period of **six weeks** from the date of submission of the said representation.

Till the disposal of the said representation, the taxing authority shall not take any coercive measure against the petitioner for the realization of the demand.

The petitioner is at liberty to mention the matter after disposal of the said representation.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)