Item no. 25
13.08.2025
Ct. 02
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A 1682 of 2025

Ashish Infratech Private Limited
versus
Assistant Commissioner of State Tax, Siliguri Charge & Ors.

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal
Ms. Keya Kundu
Ms. Chayna Kumary
...For the Petitioner.

Mr. Momenur Rahaman
Ms. Rima Sarkar
..... for the State

1. Challenging the determination made under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) vide order dated 29th December, 2023, the instant writ petition has been filed.
2. The petitioner would contend that the petitioner was not aware with regard to the either the pre-show cause notice or the show-cause notice and consequently could not respond to the same. This resulted in the determination being made under Section 73 of the said Act. According to the petitioner since the pre-show cause notice and the show-cause notice was uploaded on the view additional notices/order

tab in place of notices and order tab and by reason of complexity of the portal, the petitioner could not identify the notice.

3. For the reasons as aforesaid, the petitioner could not respond and the order impugned was passed. The petitioner, however, came to learn with regard to the above only on 15th July, 2025 when the petitioner was served with the final reminder for payment of outstanding dues through an e-mail communication.

4. In the backdrop as aforesaid, the petitioner prays for setting aside of the order impugned and for remanding the matter back to the proper officer.

5. Ms. Sarkar, learned advocate appears on behalf of the State. She would submit that without going into the issue as to whether the notices and the order impugned were uploaded on the view additional notices and orders tab instead of notices and orders tab the fact that the petitioner has been complying with the provisions of the said Act cannot be ignored.

6. Ordinarily, the petitioner on regular basis is required to comply with the provisions of the said Act by filing returns which are all done on the portal.

7. Having regard to the above, it is highly improbable that the petitioner was not aware with regard to the above order. In any event, the petitioner has an alternative remedy in the form of an appeal. The petitioner cannot be permitted to bypass statutory remedy and challenge the order by invoking the writ jurisdiction.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although, Ms. Sarkar, learned advocate has raised a point of maintainability of the writ petition on the ground of alternative remedy, however, the fact that the petitioner may have overlooked the show cause notice and the order by reasons of the show-cause notice and the order impugned being uploaded on the portal under the additional notices and orders tab, cannot be ignored.
9. Be that as it may, considering the fact that the order impugned had been issued in the year 2023, I am of the view, at this stage it shall only be appropriate, having regard to the scheme of the said Act which provides for multi tiered adjudicatory process, to permit the petitioner to prefer an appeal before the appellate authority.

10. However, at the same time, considering the fact that the determination having already been made and the same having remained outstanding for more than two years, it is necessary to put the petitioner to terms. In view thereof, in the event, the petitioner deposits 15% of the tax in dispute with the respondents within a period of three weeks form date and file an appeal within the aforesaid period, the appellate authority having regard to the observations made herein and upon ascertaining that 15% of the tax in dispute has been deposited, shall hear out and dispose of the appeal on merits. The aforesaid deposit shall be treated to be a pre-deposit for all practical purpose and no additional pre deposit shall be required.

11. With above observations and directions, the writ petition is disposed of.

12. There shall be no order as to costs.

13. Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Raja Basu Chowdhruy, J.)