Item No.13
10.09.2025
Court. No. 1
GB

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

MAT 81 of 2025
With
CAN 1 of 2025

Bratin Sikder
VS
The Principal Chief Commissioner
Central Goods & Service Tax, Kolkata & Ors.

Mr. Subham Gupta
... Appellant

Mr. Dilip Kumar Aggarwal,
Mr. Bishwaraj Aggarwal
... for the Respondents.

1. We do not find any illegality in the order impugned. The learned Judge has rightly relegated the appellant to the appellate forum in view of the alternative statutory provision of a second appeal.

2. The appellant contends that the order of His Lordship should be set aside on the ground that, as the appellant had raised the question of jurisdiction of the authority to issue the show cause notice, the alternative remedy would not be a bar.

3. Mr. Gupta, learned advocate for the appellant submits that the show cause notice was time barred. The extended period of limitation under Section 73(1) of the Finance Act, 1994, could only be invoked if there were allegations of fraud, collusion, willful misstatement, suppression of facts or contravention

of the law, with the intent to evade payment of service tax.

4. According to Mr. Gupta, the writ court ought to have decided the question of legality of the show cause notice.

5. We have considered the records of the proceeding before the authorities and we find that the issue of limitation had not been raised at the relevant point of time. Such issue was sought to be raised for the first time in the writ petition. The learned Judge, however, held that the alternative remedy would be a bar and did not entertain the writ petition. His Lordship permitted the appellant to approach the appellate authority by filing a second appeal and also pray for condonation of delay in filing the said appeal. The issue as to whether the show cause notice was barred by limitation, can be raised in the appeal to be filed by the appellant. We allow the appellant to raise such point before the learned appellate authority in the second appeal and the authority will decide the correctness of the order appealed from, including the question of limitation. The competence of the authority to issue the show cause notice at the relevant stage, shall also be decided accordingly.

6. Accordingly, the appeal and the connected application are disposed of.

7. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Prasenjit Biswas, J.)