09.04.2026
Sl No.2
Ct. No.237
S.A.

WPA 24073 of 2024

Fabworth Promoters Private Limited & Anr.
-vs-
Union of India & Anr.

Mr. Mainak Bose
Mr. Ajay Sanwaria
…for the petitioners
Mr. Kaushik Dey
Mr. Anurag Roy
…for answering respondent
Ms. Manasi Mukherjee
Mr. Dijitesh Mukherjee
…for respondent

The petitioners challenge an order dated May 3, 2024, passed by the Commissioner, CGST and Central Excise, Kolkata South Commissionerate, whereby the Commissioner confirmed the allegation of irregular availment of credit by the petitioners and imposed consequential penalties.

Mr. Mainak Bose, learned senior advocate appearing on behalf of the petitioners, submits that the order is barred by limitation. It is contended that, in the facts and circumstances of the case, there was no justification for invoking Section 73 of the Finance Act, 1994. It is further submitted that the petitioners were not afforded an adequate opportunity of hearing prior to the issuance of the impugned order. The relevant documents upon which the petitioners intended to rely were seized by the Superintendent, Anti-Evasion, CGST and Central Excise, Kolkata

North Commissionerate. It is also contended that the authority ought not to have disregarded the completion certificate issued by the concerned architect empanelled with the Kolkata Municipal Corporation.

Learned counsel appearing for the respondents, on the other hand, submits that the seized documents pertain to the financial years 2017–18 and 2018–19, whereas the impugned assessment relates to the financial years 2014–15 to 2016–17. It is further submitted that the petitioners were granted an adequate opportunity of hearing and that, in the facts of the case, the authority was justified in invoking Section 73 of the Finance Act, 1994 so as to avail the extended period of limitation.

Upon consideration, this Court is of the view that paragraph 6(2) of the impugned order dated May 3, 2024 clearly indicates that an adequate opportunity of hearing was afforded to the petitioners. Accordingly, it cannot be said that the principles of natural justice have been violated. The authority, in the present case, purported to invoke Section 73 of the Finance Act, 1994 by assigning reasons. In such circumstances, it cannot be concluded that the order is barred by limitation. Whether the authority was justified in invoking Section 73 of the said Act may be agitated by the petitioners; however, an alleged erroneous assumption of jurisdiction, ipso facto, does not constitute a ground for interference by this Court under Article 226 of the Constitution of India, particularly in the presence of an efficacious alternative statutory remedy.

This Court is further of the view that there is no scope for interference with the impugned order dated May 3, 2024 within the limited ambit of judicial review under Article 226 of the Constitution of India. The petitioners have an alternative remedy by way of appeal, wherein they may contest the matter on merits, including the invocation of Section 73 of the Finance Act, 1994. It appears that the impugned order dated May 3, 2024 was challenged by filing the present writ petition on September 20, 2024.

However, in the facts and circumstances of the case, this Court is of the view that the petitioners ought to be permitted to prefer an appeal before the Central Excise and Service Tax Appellate Tribunal.

If the petitioners file such an appeal within a period of three weeks from the date of this order, the appellate authority shall condone the delay in filing the appeal in terms of Section 86(5) of the Finance Act, 1994.

It is made clear that this Court has not entered into the merits of the case, including the issues relating to jurisdiction and limitation as raised by the petitioners. The Tribunal shall be at liberty to adjudicate upon such issues in accordance with law.

After the order was dictated, it was submitted by Mr. Mainak Bose, learned senior advocate appearing for the petitioners, that the demand in respect of the Cen VAT credit has already been settled between the parties and that a discharge certificate has been issued by the competent authority. The petitioners shall be at liberty to place the said discharge certificate before the appellate authority for its consideration.

Accordingly, **WPA 24073 of 2024** stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, *J.*)