

24.09.2024
Item No.6
gd/ssd

FMA/1168/2024

HRIDAY KUMAR DAS
VS
STATE OF WEST BENGAL AND ORS.
IA NO: CAN/1/2024

Mr. Himangshu Kumar Ray,
Ms. Shiwani Shaw,
Mr. Subhasis Podder,
Mr. Amit Saha,
Mr. Piyas Chowdhury
..for the Appellant.

Md. T.M. Siddiqui,
Mr. T. Chamkraborty,
Mr. S. Sanyal
..for the State.

1. This intra court appeal by the writ petitioner is directed against an interim order dated 21st August, 2024 in WPA 9612 of 2024 by which the learned Single Bench while entertaining the writ petition challenging an order passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (the Act) granted a stay of the proceedings subject to the payment of 10% balance amount of the disputed tax.

2. The appellant is aggrieved by such condition and has raised several grounds including grounds touching upon the merits of the matter.

3. At the request of the learned advocates appearing for the appellant as well as the learned

Government counsel appearing for the respondent/State, this court is inclined to dispose of the writ petition as well as this appeal by this common judgment and order. The first issue to be considered is whether the appellate authority was justified in enhancing the tax liability payable by the appellant/assessee in an appeal filed by the assessee without following the procedure under Section 107(11) of the Act.

4. Admittedly, the tax which was quantified by the assessing officer is Rs.2,58,536.80. However, while imposing the penalty the assessing officer imposed penalty on the sum of Rs.41,83,804.72.

5. This order was put to challenge by filing a statutory appeal.

6. Therefore, the appellate authority was required to consider as to whether the tax liability fixed by the adjudicating authority at Rs.2,58,536.80 is correct and whether the penalty is to be levied on the total amount of Rs.41,83,804.72. However, the appellate authority while passing the order has suo motu enhanced the tax liability on the amount payable by the appellant without following the procedure under Section 107(11) of the Act.

7. Therefore, the order passed by the appellate authority to that extent is not tenable in law and, therefore, liable to be set aside.

8. However, with regard to the correctness of the order passed by the adjudicating authority, fixing the tax liability and penalty is concerned, we are of the view that the matter should be remanded back to the adjudicating authority on account of certain subsequent events. In respect of the same period, another notice was issued by the Deputy Commissioner and it appears that due to inadvertence or wrong advice the appellant/assessee had paid the tax. When this was pointed out by the department, the adjudicating authority, namely, the Assistant Commissioner of Revenue (WBGST) passed a closing order on 22.07.2024.

9. Therefore, the impact of the closing order on the present liability also has to be examined afresh.

10. The learned advocate for the appellant submitted that the adjudicating authority in its original order erroneously fixed the penalty on the entire sum of Rs.41,83,804.72, which was not justified.

11. Apart from that it is contended that penalty itself is not imposable and in this regard various statutory provisions were referred to since we are of the opinion that the matter has to be remanded back to the adjudicating authority.

12. We leave all issues open so that the adjudicating authority can consider the matter afresh uninfluenced by any finding recorded by him in the

order dated 03.11.2021 or any observations made by the appellate authority in its order dated 31st May, 2023 which has been set aside by us in this judgment and order. The adjudicating authority should also consider the effect of the closing order dated 22.07.2024 which also pertains to the very same tax period, namely, April, 2019 to March, 2020 for the same amount.

13. Accordingly, the appeal as well as the writ petition is allowed. The order passed by the appellate authority as well as the adjudicating authority is set aside and the matter stands remanded to the adjudicating authority for fresh consideration.

14. The appellant shall file a supplementary reply to the allegations to the show cause notice raising all contentions and also dealing with the effect of the closing order dated 22.07.2024 within a period of six weeks from the date of receipt of the server copy of this order after which an opportunity of personal hearing be afforded to the authorized representative of the appellant and fresh orders be passed on merits and in accordance with law.

15. It is well open to the appellant to raise all contentions both factual and legal including the contention as to whether the penalty proceedings would not have been initiated or with regard to whether

Section 73 of the Act would apply or whether Section 74 of the Act would apply.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)