

Court No. - 2

Case :- WRIT TAX No. - 1733 of 2024

Petitioner :- M/S New Okhla Industrial Development Authority

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Vipul Dube

Counsel for Respondent :- A.S.G.I., Amit Mahajan, Pranjali Mehrotra

Hon'ble Piyush Agrawal, J.

Heard Mr. Jasmeet Singh along with Mr. Vipul Dube for the petitioner and Mr. Amit Mahajan for respondent nos. 2 and 3. Mr. Abrar Ahmad has filed memo of appearance on behalf of respondent no. 1, Union of India.

With the consent of parties, the present petition is being decided finally at the admission stage, without calling any pleadings.

The present writ petition has been filed inter alia for the following reliefs:

"a. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.2.2024 passed by the Ld. Additional Commissioner in appeal No. 55/GST/Appeal-Noida/NOI/2022-23 preferred by the instant Petitioner to the extent that it holds the said Appeal as premature on the erroneous ground that no appealable order has been passed by any adjudicating authority;

b. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 11.3.2023 and 12.4.2022 passed by the Respondent No. 3 vide which the Respondent No. 3 directed the Respondent No. 4 to deduct an amount of Rs. 90,90,696/- from the bank account of the Petitioner;"

Learned counsel for the petitioner submits the petitioner has debited/adjusted its electronic cash ledger in order to intimate the authorities of the discharge of its tax liability for the month of July, 2017, however being not satisfied, the order dated 4.4.2022 was passed and subsequently on 11.3.2022 as well as on 12.4.2022 a notice under Section 79 of the CGST Act was issued by which recovery of demand of interest was made. He submits that feeling aggrieved to the said order, the petitioner has preferred Writ Petition No. 648 of 2022, which was dismissed vide order dated 20.5.2022 with direction to the petitioner to avail of alternative

remedy under Section 107 of the Act. He further submits that in pursuance of the said order, the petitioner has filed an appeal but the same was dismissed by order dated 29.2.2024 on the ground of maintainability. He submits that the aforesaid facts have been noticed in the impugned order in para 2.9 however the appeal has been dismissed on the ground that the present appeal under Section 107 of the Act, is not maintainable.

On a pointed query put to Mr. Mahajan, learned counsel for the respondent that once the Writ Court has directed the petitioner to avail of alternative remedy under Section 107 of the Act, how the impugned order could be passed, he could not reply the same.

Once the Division Bench of this Court has directed the petitioner to avail of alternative remedy as provided under Section 107 of the Act, the impugned order cannot be sustained in the eyes of law and therefore, the matter requires reconsideration by the appellate authority.

In view of above, the writ petition is **partly allowed**. The impugned order dated 29.2.2024 is set aside.

The matter is remanded to the appellate authority, who shall decide the matter on its merit without raising any objection in respect of maintainability.

Order Date :- 17.10.2024

Rahul Dwivedi/-