06
11.8.2026
Court No. 10
AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 8604 of 2025

Protiva
-versus
Deputy Commissioner of State Tax, Ultadanga, Cossipore & Belgachia charge & Ors

Mr. Souradeep Majumdar.
...For the Petitioner.

Ms. Manasi Mukherjee.
Mr. Bijitesh Mukherjee.
... For the State respondent.

1. The petitioner in the instant writ petition challenges inter alia, an *ex parte* order dated 25.1.2024 passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act').

2. The petitioner is a partnership firm constituted under the Indian Partnership Act, 1932. The petitioner is engaged in Events, Exhibitions, Conventions and Trade Shows Organization and Assistance Services' (SAC:998596). The petitioner is duly registered under the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as WBGST Act) as well as the Central Goods & Services Tax Act, 2017 (hereinafter referred to as CGST Act) and the Integrated Goods & Services Tax Act, 2017, holding the same GSTIN-19AALFP1170F1Z8.

3. Apropos the fact of the case is that the respondent no. 1 intimated the petitioner through e-mail dated 4.7.2019 regarding a discrepancy of input tax Credit (ITC) as reflected in GSTR-3B vs GSTR-2A for 2018-19. As per data obtained from the information system division of the Directorate of Commercial Taxes, Government of West Bengal, it appeared that there was an excess availment of ITC to the tune of Rs. 12,54, 913.86 for the financial year 2018-19.

4. In response to the said e-mail, the petitioner submitted a reconciliation statement. It was contended that inward supplies were received, during the period January to March, 2018, resulting in availment of ITC amounting to Rs. 13.16,816.10/-.

5. It is further submitted that the ITC to the extent of Rs. 60,300/- pertaining to FY 2017-18 was availed in the subsequent year that is FY 2018-19. Thus, after adjusting the said amount, the net ITC claimable for FY 2018-19 worked out to Rs.12,56,516/-. Against this the petitioner has claimed ITC of Rs. 12,54,914/- and the balance amount of Rs. 1,601.64 was not claimed. Therefore, it is contended that there was access availment of ITC.

6. Since the petitioner did not deposit the alleged access ITC of Rs. 12,54,913.85/-, the respondent authorities issued a show cause notice in Form GST DRC-01 dated 4.12.2023 under Section 73(1) of the CGST Act. Thereafter, the impugned adjudication order has been passed under Section 73(9) of the CGST Act in Form GST DRC-07 dated 25.1.2024, being the order impugned in the present writ petition.

7. Learned counsel appearing for the petitioner submits that the reply to the show cause notice could not be filed due to the medical exigencies of the partners of the petitioner firm.

8. It is further submitted that the assessment proceedings have not been conducted in accordance with law and no adequate and effective opportunity was afforded to the petitioner prior to the passing of the impugned order.

9. The learned counsel contends that the order dated 25.1.2024 passed *ex parte* suffers from gross irregularities and is in violation of the principles of natural justice. Accordingly the said order is not sustainable in the eye of law and is liable to be set aside.

10. The petitioner seeks leave to prefer a statutory appeal before the appellate authority upon deposit of the requisite pre-deposit as mandated under the statute.

11. Learned counsel appearing for the respondent authorities vehemently opposes the submissions advanced on behalf of the petitioner and submits with regard to the conduct of the partners of the petitioner firm.

12. It is further submitted that ample opportunities were afforded to the petitioner to file reply to the show cause notice. Dates were also fixed for personal hearing on two occasions. However, the petitioner failed to avail the said opportunities. As a result, the impugned order was passed *ex parte*.

13. It is submitted that in terms of Section 107 of the CGST Act, the petitioner has an efficacious alternative remedy of filing an appeal within three months from the date of communication of order with a further condonable period of one month.

14. Having heard the parties and upon perusing the materials available on records, the petitioner has been able to make out a prima facie case, warranting an interference at this stage.

15. This Court has taken a judicial note of the medical documents annexed with the writ petition pertaining to the medical exigencies of the partners of the petitioner firm.

16. While it is not in dispute that an alternative statutory remedy of appeal under Section 107 of the CGST Act, is available to the petitioner, this Court is of the considered view that in the facts and circumstances of the case particularly considering the huge amount of tax, interest and penalty imposed vide impugned order, and the medical exigencies pleaded, if the petitioner is relegated to the appellate forum without any protection, it would cause prejudice to the petitioner.

17. Therefore, this court deems it appropriate to dispose of the writ petition by permitting the petitioner to avail the statutory remedy of appeal, subject to certain conditions and safeguards.

18. Accordingly, this writ petition is disposed of with the following directions;

a. The petitioner is directed to prefer an appeal before the appellate authority under Section 107 of the CGST Act, within four weeks from the date of communication of this order, upon payment of the statutory pre-deposit and cost assessed at Rs. 30,000/- in favour of the State Legal Services Authority, High Court, Calcutta.

b. The appellate authority shall entertain the appeal upon being satisfied that the cost imposed by this court has been paid.

c. The appellate authority is directed to dispose of the appeal expeditiously, preferably on or before 30.11.2026.

d. The petitioner shall not seek any unnecessary adjournments before the appellate authority.

19. However, it is made clear that the appellate authority shall not be influenced with the observations made in this order and shall decide the appeal independently in accordance with law on the basis of the material available on record.

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

21. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Smita Das De, J.)