

09.06.2023
Item Nos.17-18
gd/ssd

MAT/1020/2023
IA NO: CAN/1/2023
PRABHU DAYAL JAJOO
VS
THE DEPUTY COMMISSIONER, STATE
TAX, BUDGET BUDGET CHARGE AND ORS.
with
MAT/1021/2023
IA NO: CAN/1/2023
PRABHU DAYAL JAJOO
VS
THE DEPUTY COMMISSIONER, STATE
TAX BUDGET BUDGET CHARGE AND ORS.

Mr. Himangshu Kumar Ray,
Mr. Subhasish Poddar,
Mr. Paban Kumar Ray,
Ms. Shiwani Shaw
..for the Appellant.

Mr. A. Roy,
Md. T.M. Siddiqui,
Mr. D. Ghosh,
Mr. N. Chatterjee,
Mr. D. Sahu
..for the State.

Mr. Arijit Chakraborty,
Mr. Sayantan Chatterjee,
Mr. Soumyajyoti Nandy
..for the Respondent Nos.4 and 5.

Mr. Sayan Datta
..for the Respondent No.6.

1. We have heard the learned advocates for either of the parties.

2. These appeals have been filed against the order passed in the writ petition which were dismissed by the learned Single Bench.

3. The orders impugned in the writ petition were the orders passed under Section 74 of the WBGST Act, 2017.

4. Admittedly, the said order is an appealable order and the Court also taking note of the fact that the writ petition was preferred much after the period of limitation for filing the appeal that too beyond the condonable period declined to interfere with the order passed under Section 74 of the Act. While dismissing the writ petition, the learned Writ Court has held that it will be open to the appellant to avail the statutory remedy available under the Act. The main ground on which the order passed under Section 74 of the Act was on the ground of violation of principles of natural justice.

5. According to the appellant, the show cause notice was uploaded in a different portal and the appellant had no knowledge of the same. That apart, the show cause notice also bereft of the particulars and therefore, it is submitted that the very initiation of proceedings itself is not in accordance with law. Though the orders which were impugned in the writ petition was passed in March, 2022, the notices for recovery were issued only in the year March, 2023.

6. Mr. T.M. Siddique, learned counsel appearing for the State would vehemently contend that the submission made by the learned advocate for the

appellant is incorrect and all information was provided to the assessee.

7. Thus, considering the peculiar facts and circumstances of the case, we are of the view that liberty can be granted to the appellant to file a statutory appeal, more so when certain sums of money have already been recovered by the department from the electronic cash ledger.

8. In the result the appeals are disposed of by directing the appellant to file a statutory appeal before the first appellate authority and if the same is filed within a period of 15 days' from the date of receipt of the server copy of this order, the appeals shall be entertained without rejecting the same on the ground of limitation. The pre-deposit amounts which the appellant have to make shall be adjusted from and out of the amount already recovered from the appellant by way of recovery from the electronic cash ledger, the balance amount which was recovered from the appellant shall abide by the orders that may be passed by the appellate authority in the appeal to be filed by the appellant in terms of the above direction. If the appellant files a statutory appeal within the period stipulated by this order, the attachment of the appellant's bank account shall be lifted.

9. Needless to state that the appellant would be entitled to canvass all the grounds which have been raised in the writ petition.

**(T. S. SIVAGNAM)
CHIEF JUSTICE**

(HIRANMAY BHATTACHARYYA, J.)

