

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.65 of 2024

Sri Kashinath Bhattacharjee

..... Petitioner (s)

V E R S U S

Union of India and others

..... Respondent(s)

For Petitioner (s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. S. C. Sen, Advocate,
Mr. B. Paul, Advocate.

For Respondent (s): Mr. Kohinoor N. Bhattacharyya, G.A.,
Mr. Bidyut Majumder, Deputy, SGI,
Mr. T. Debbarmma, Advocate,
Ms. Kalita Reang, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

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28/02/2024

Heard Mr. B. N. Majumder, learned senior counsel assisted by Mr. S.C. Sen, learned counsel for the petitioner. Also heard Mr. Bidyut Majumder, learned Deputy SGI for the Union of India and Mr. T. Debbarma, learned counsel for the respondent-CGST.

[2] The writ petition was filed within the period of limitation of 60 days for preferring an appeal. The writ petitioner has assailed the show cause notice dated 24th March, 2022 and the adjudication order-in-original dated 08.12.2023 issued by the Assistant Commissioner, Central Goods and Service Tax, Tripura Div.-1, Agartala-respondent No.3 whereunder a liability under Section 73(1) proviso to the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 has been imposed. The adjudicating officer has confirmed the demand of Rs.48,16,754/- towards service tax, SB Cess and KK Cess dues along with interest as per Section 75 of the Finance Act, 1994 and a penalty of Rs.48,16,754/- equivalent to the amount of tax liability under Section 78 of

Finance Act, 1994 for the period under dispute. The petitioner has been allowed to avail the benefit of reduced penalty of 25% of Service Tax demanded if such service tax and the interest are paid along with 25% of penalty within thirty days from the date of communication of the order. A penalty of Rs.10,000/- has also been imposed under Section 77 of the Finance Act, 1994 for violation of Section 70 of the Act.

[3] Apart from other grounds on merit raised by the petitioner, one of the grounds relates to non service of show cause notice dated 24.03.2022 within the time prescribed under Section 73(1) proviso to the Act of 1994. The proceedings relate to the tax period from October, 2016 to March, 2017. Under Section 73(1) proviso to the Act of 1994, the show cause notice would have been time barred if it is not served before expiry of 5(five) years period from the relevant date.

[4] Mr. B.N. Majumder, learned senior counsel for the petitioner, has drawn the attention of this Court to certain correspondences dated 22.02.2023 (Annexure- 7) and 16.03.2023 (Annexure-8) in support of the submission that the show cause notice was not served upon the assessee in the proper mode as prescribed under Section 37(c) of the Central Excise Act, 1944. It is submitted that the adjudicating authority has in the impugned adjudication order at so many places referred to the show cause notice dated 24.03.2022 upon the assessee and the letter dated 06.07.2022 of the assessee seeking 30 days time for submission of reply in order to substantiate their conclusion that the assessee was in receipt of notice dated 24.03.2022 before the expiry of the extended period of limitation of 5(five) years. It is submitted that if there was no proper service of show cause notice, the entire proceeding would be time barred. Therefore, the petitioner has

approached this Court as there are jurisdictional errors in initiating proceedings and imposing a tax liability together with interest and penalty of the equivalent amount.

[5] Learned counsel for the Union of India and the Central Goods & Services Tax Department have opposed the prayer and submitted that Section 85 of the Finance Act, 1994 provides for a forum of appeal before the Commissioner of Appeals.

[6] We have considered the submissions of the learned counsel for the parties. Since the issue raised herein involves mixed question of fact and law to be examined from the records of the adjudication proceedings, we are of the considered view that petitioner has an adequate alternative remedy before the appellate forum in terms of Section 85 of the Finance Act, 1994. Therefore, we refrain from exercising our jurisdiction under Article 226 of the Constitution of India at this stage. Petitioner is at liberty to approach the appellate authority with due pre-deposit in order to invoke the appellate remedy. In case question of limitation arises, the appellate authority would consider it sympathetically since the petitioner was pursuing his remedy before the Court in writ jurisdiction. Let it be made clear that we have not gone into the merits of the case.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ