

28.02.2025
Item Nos. 15
AN/Ct. No. 05

WPA 30885 of 2024

Basant Kumar Upadhyay
vs.
State of West Bengal ors.

Mr. Siddhartha Dasgupta
Mr. Souvik Guha

... for the petitioner

Mr. A. Ray, 1d. G.P.
Md. T. M. Siddiqui, 1d. A.G.P.
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu

... for the State

- 1.** Supplementary affidavit filed on behalf of the petitioner in Court today in terms of leave granted by order dated 18.02.2025 is taken on record.
- 2.** Challenging the order dated 23.07.2024 rejecting the appeal under Section 107 of the WBGST/CGST Act, 2017 arising out of an order passed under Section 73 of the said Act and the demand raised thereon in Form GST-DRC-07 dated 22.11.2023, the instant writ petition has been filed.
- 3.** The writ petitioner has a statutory right of preferring an appeal before the appellate tribunal from the order which formed the subject matter of challenge in the writ petition. Unfortunately, since the appellate tribunal is yet to be constituted the present writ petition has been filed. Learned counsel appearing for the petitioner

would submit that this Court may be pleased to admit the writ petition and stay the demand.

- 4.** Mr. Sanyal, learned counsel enters appearance on behalf of the respondents and while acknowledging the fact that the appellate tribunal is yet to be constituted, he submits that the writ petition may be heard on usual terms subject to the petitioner complying with the pre-deposit as provided under Section 112((7) of the said Act. Alternatively he would submit that considering the fact that the appeal has been dismissed on the ground of limitation and that there has been no adjudication at the appellate stage on merits, this Court may either take up hearing of the writ petition or may remand the matter back to the appellate authority.
- 5.** Having heard learned counsel for the respective parties and noting that the petitioner's appeal under Section 107 of the said Act has been rejected on the ground of limitation without any adjudication on merit and also considering the fact that the tribunal is yet to be constituted under Section 109 of the said Act, I am of the view that in the fitness of things, and considering that the petitioner had duly made payment of pre-deposit the appellate authority would be far more equipped to decide the matter on factual issues as such I am inclined to remand the matter back to the appellate authority for a decision on merits.

- 6.** Accordingly, the order passed by the appellate authority dated 23.07.2024 is set aside and the appeal filed by the petitioner in Form GST-APL-02 under Section 107 of the said Act is restored. The appellate authority is directed to hear out the matter and dispose of the appeal on merits as expeditiously as possible, preferably within a period of 8 weeks from the date of communication of this order.
- 7.** With the above observations and directions, the instant writ petition stands **disposed of**, however, with no order as to costs.
- 8.** All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)