WPA 9752 OF 2022

10.06.2022

Sl no. 29 Ct no. 2 P.M. Imax Infrastructure Private Limited.
- Vs -

The Deputy Commissioner, Directorate of Revenue Intelligence and Enforcement, Government of West Bengal & Ors.

Mr. J. Khan,

Mr. T. Ahamed Khan,

Mr. B. Sengupta

... for the petitioner

Mr. Anirban Ray, Ld. Govt. Pleader

Mr. T.M. Siddiqui,

Mr. S. Mukherjee,

Mr. D. Ghosh,

... for the State

Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned order dated 3rd March, 2022 passed by the Deputy Commissioner of Revenue, Directorate of Revenue Intelligence and Enforcement, under Section 74(9) of the State GST Act, on the ground that the same is without jurisdiction by contending that the initiation of proceeding in question under the State GST Act is without jurisdiction and he cannot act as an officer under the State GST Act.

Mr. Ghosh, learned advocate appearing for the respondents opposing the writ petition and defending the jurisdiction of the respondent DRI officer

concerned relies on Section 4, Section 5 of the State GST Act as well as notification dated 8th March, 2019 and 29th March, 2019.

Mr. Khan, learned advocate appearing for the petitioner relies on a notification dated 12th February, 2019. Mr. Ghosh also raised point of maintainability of the writ petition on the ground of availability of alternative remedy by way of an appellate forum but the same is not sustainable for the reason that it is a well settled principle that alternative remedy is not always a bar and particularly when the question of jurisdiction is involved in the writ petition and the writ court is very much empowered to entertain the writ petition, if an order or action of an officer is without jurisdiction or there is a violation of principle of natural justice or constitutional validity of a provision of law is involved and prima facie the petitioner has been able to make out a case that the issue involved in this case is the jurisdiction of the officer concerned who has exercised the power of a GST Officer and since interpretation of several provisions of law and notifications are involved, this writ petition cannot be thrown out at the motion stage on the ground of availability of alternative remedy and this writ petition has to be heard and decided on merit.

Let respondents file affidavit-in-opposition within four weeks, petitioner to file reply thereto, if any, within two weeks thereafter.

List this matter for final hearing after ten weeks.

Prima facie the petitioner has been able to make out a case for an interim order and considering this aspect there will be conditional stay of the impugned adjudication order dated 3rd March, 2022 and subject to deposit of 10% of the demand in question, by the petitioner, within ten days from date and if such payment is made by the petitioner within the time stipulated herein, no coercive action shall be taken against the petitioner for recovery of the demand in question.

(Md. Nizamuddin, J.)