

No pre-deposit required in case tax is fully deposited

The Hon'ble Calcutta High Court in ***Liakhat Ali Mallick v. State of West Bengal [M.A.T. NO.823 of 2023 dated June 16, 2023]*** set aside the order of the Single Bench directing the assessee to deposit 20 per cent of the interest liability and directed the Appellate Authority to consider the appeal of the assessee on merits and held that, condition of deposit of 20 per cent need not be imposed since the same is not statutory requirement.

Facts:

Liakhat Ali Mallick ("**the Petitioner**") aggrieved by the demand order of Adjudicating Authority filed an appeal under Section 107(7) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") and the Petitioner deposited 10 per cent of the disputed tax as pre deposit.

The Petitioner filed an appeal before the Appellate Authority argued that the garnishee notice was issued by the Adjudicating Authority in case where they have already paid the demanded tax in full. The Appellate Authority rejected the appeal.

Aggrieved by which the Petitioner filed writ before The Hon'ble Calcutta High Court in ***W.P.A. no.7454 of 2023 dated April 27, 2023*** granted the stay on the condition that Petitioner has to pay additionally pay 20 per cent of the interest liability.

Aggrieved by the Order of the Single bench the Petitioner filed an intra- court appeal.

Issue:

Whether the Petitioner is required to pay additional 20 per cent of interest liability as deposit for availing stay order?

Held:

The Hon'ble Calcutta High Court in ***M.A.T. NO.823 of 2023*** held as under:

- Observed that, single Bench has granted stay of the garnishee notice but has imposed a condition that the Petitioner has to deposit 20 per cent of the interest liability which was originally quantified as INR 31,58,936, subsequently rectified as INR 29,85,527.
- Held that, the condition need not be imposed by directing the Petitioner to pay 20 per cent of the interest.
- Allowed the appeal and set aside the order and directed the Appellate Authority to consider the appeal on merits in accordance with law after affording an opportunity of personal hearing.

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