

Writ Petition can be filed for interim protection when Appellate Tribunal is not constituted

The Hon'ble Calcutta High Court in the case of *G.L. Kundu and Sons. Steel (P) Ltd. v. Deputy Commissioner State Taxes [WPA No. 2462 of 2023 dated January 08, 2024]* disposed of the writ petition, thereby holding that, writ petition can be filed for interim protection when Appellate Tribunal has been constituted.

Facts:

G.L. Kundu and Sons Steel (P.) (Ltd.) ("**the Petitioner**") filed a writ petition appeal against the appellate order passed under Section 107 of the West Bengal Goods and Services Tax Act, 2017 ("**the WBGST Act**") for the period of 2018-2019 on the ground that the appellate tribunal has not been constituted till date.

Issue:

Whether Writ Petition can be filed for interim protection when Appellate Tribunal is not constituted?

Held:

The Hon'ble Calcutta High Court in *WPA No. 2462 of 2023* held as under:

- Observed that, *Circular No. 132/2/2020 dated March 18, 2020 ("**the Circular**")* was issued by the Revenue Department ("**the Respondent**") wherein clarification was issued pertaining to non-constitution of the Appellate Tribunal.
- Relying upon the judgment of the Hon'ble Bombay High Court in the case of *Rochem India Pvt. Ltd. v. Union of India and Ors. [WP No. 10833 of 2019 dated February 08, 2023]*, noted that, the period of the limitation was extended as non-constitution of the tribunal was causing hardship to the Assessee, and interim protection can be granted by way of writ petition for the limited period.

- Opined that, the Hon'ble High Court is inclined to entertain the present writ petition for the limited purpose of granting interim protection to the Petitioner.
- Held that, the period of filing of the appeal before the Appellate Tribunal is extended as per the Circular.
- Further Held that, appellate order issued by the Respondent would be given effect after expiry of two weeks of the prescribed period as per the Circular is over.

Relevant extract of the Circular:

*“4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated December 03, 2019**. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.*

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.”

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