

12.09.2023
PB
Sl. No.19.

WPA 21565 of 2023

M/s. M. L. Dalmiya & Co. Ltd. & Anr.
Vs
The Additional Commissioner CGST & CX,
Kolkata Audit-I Commissionerate & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah.

... For the Petitioners.

Mr. U. S. Bhattacharya,
Ms. Ekta Sinha,
Ms. Banani Bhattacharya.

.....for the CGST authority.

Mr. Ranajay Chatterjee,
Mr. K. P. Chatterjee.

.....for the UOI.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned show-cause notices dated 19th April, 2021 and 2nd August, 2022 issued by the CGST authority concerned on the basis of Section 78(1) read with Section 174 of the CGST Act, 2017, on the ground that the same is without jurisdiction and is barred by limitation.

Petitioner submits that the impugned order has been passed pertaining to the period 2015-2016 to 2017-2018 (June 2017) during which service tax was in force and the impugned proceeding has been

initiated after the commencement of CGST Act. Petitioner relies on Section 174(2)(a) of the CGST Act, 2017.

Learned advocate appearing for the respondent CGST authority concerned in opposing the writ petition justifies the impugned show cause notice by relying on Section 174(2)(e) of the CGST Act.

Considering the facts and circumstances of the case in spite of availability of alternative remedy by way of an appeal, this Court is inclined to entertain this writ petition since the question of jurisdiction of the authority who has passed the impugned order is involved as well as interpretation of the aforesaid Sections, are involved.

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

In the meantime, the impugned proceeding may be continued and final order may be passed, but it shall not be giving effect to without the leave of this Court.

List this matter for final hearing in the monthly list of December, 2023.

(Md. Nizamuddin, J.)

