

Notice must be served on taxpayer if the power of filing cross appeal to be invoked: HC

Facts of the case: Radiant Enterprises (P.) Ltd. v. Joint Commissioner, CGST & CX (Appeal I) - [2023] (Calcutta)

The appellant filed refund application which was rejected and a statutory appeal was filed before the Appellate Authority. The Appellate Authority passed order also on issues which was neither case before original authority nor emanated from order passed by adjudicating authority. The appellant filed writ petition before the High Court challenging that portion of the order passed by the Appellate Authority, which was never the case before the original authority. But the learned Single Bench held that it is not inclined to interfere with the order. Thereafter, the appellant filed intra-Court appeal.

Decision of the case:

The Honorable High Court noted that the GST law does not provide for filing cross appeal by department in statutory appeal filed before Appellate Authority under Section 107 of CGST Act. In case power to file cross appeal had to be invoked, notice was to be served on taxpayer. Even assuming that Appellate Authority had such jurisdiction, in absence of any notice it would be in violation of principles of natural justice and therefore, the Appellate Authority could not have taken a decision on issue which did not emanate from order passed by original authority. Thus, it was held that order passed by Appellate Authority on those issues would be set aside.