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Court
No. 11
G.S.Das

25.6.2021

MAT 418 of 2019
With
CAN 1 of 2020 (Old CAN No. 869 of 2020)
CAN 2 of 2020

Raja Chatterjee
-Vs-
State of West Bengal & Ors.

Mr. B. Halder
Mr. Indranil Halder

… for the Appellant

Mr. Raja Saha
Mr. Niloltpal Chatterjee
Mr. Debasish Ghosh

… for the State-respondent

This appeal has arisen out of the order dated 27 February, 2019 passed by the Hon'ble Single Bench in a connected writ petition.

The Hon'ble Single Bench while dismissing the writ petition refused to entertain the prayer of the appellant before us on the ground that the appellant in spite of the leave granted by the Hon'ble Division Bench *vide* order dated 2nd July, 2018 failed to make necessary correction in the memorandum of appeal upon amending the preamble to the grounds of the said appeal filed before the statutory authority.

Being aggrieved by said order dated 27th February, 2019 passed by the Hon'ble Single Bench, the appellant has come up before us with the present appeal and the connected stay application.

It appears on perusal of the order dated 2nd July, 2018 passed by the Hon'ble Division on MAT 1832 of 2017 that the Division Bench found some incorrect statements were made in the preamble to the grounds of appeal to the extent that the memorandum of appeal was filed with the statement that "as per observation made by the Hon'ble Justice Debangshu Basak in W.P. 24481(W) of 2017" and the Hon'ble Division Bench observed that this was an incorrect statement.

The Hon'ble Division Bench granted leave to the appellant to pray for leave before the Appellate authority being the Commissioner of Excise, West Bengal for correction of the preamble to the grounds of appeal by deleting the said incorrect statement which is quoted above and on a prayer of such leave that would be granted by the Learned Commissioner of Excise.

Pursuant to the said order dated 2nd July, 2018, the Excise Commissioner, West Bengal on the appeal and the application for condonation of delay in preferring such statutory appeal, passed an order dated 27th August, 2018 which is under challenge in the connected writ petition out of which the present appeal and the connected applications have been preferred before this Court.

On the perusal of the said order dated 27th August, 2018 of the Commissioner of Excise, West

Bengal, it appears that the appellate authority found it fit not to grant further leave to amend the preamble to the grounds of appeal since there was lapses on the part of the appellant in making necessary correction in terms of the observations made by the Hon'ble Division Bench in its order dated 2nd July, 2018.

During the course of the hearing, Mr. Halder, Learned Advocate for the appellant, has prayed for hearing of the appeal on merits upon necessary correction which is strongly opposed by Mr. Saha, Learned Advocate representing the contesting respondents, upon placing reliance on the order passed by the Excise Commissioner, West Bengal dated 27th August, 2018.

It is submitted on behalf of the State-respondents that there was no infirmity in the order passed by the Excise Commissioner, West Bengal dated 27th August, 2018 since from the chronological facts it appears that there were lapses on the part of the appellant in making necessary correction of the preamble to the grounds of appeal.

Having heard Learned Advocates representing the respective parties to this appeal and considering the materials on record including the order passed by the Hon'ble Division Bench dated 2nd July, 2018, we are aware that the appellant has previously in spite of grant of necessary leave by the order of the Hon'ble

Division Bench dated 2nd July, 2018, failed to make necessary correction in the preamble to the grounds of appeal pending before the appellate authority.

However, on perusal of the order dated 27th August, 2018, it appears that the application for condonation of delay in preferring the appeal before the Excise Authority was allowed as it has also been observed by the Hon'ble Single Bench but the appellate authority refused to entertain the appeal on the ground that necessary steps were not taken pursuant to the order of the Hon'ble Division Bench dated 2nd July, 2018.

Considering this aspect, we grant liberty to the appellant to make a prayer before the appellate authority i.e. the Excise Commissioner, West Bengal within a period of seven days from this date for hearing of the appeal on merit upon depositing cost of Rs.10,000/- within the said period of seven days. If the cost is deposited within the specified period then the Excise Commissioner, West Bengal shall accept the prayer to be made on behalf of the appellant to hear out the appeal on merit and shall dispose of the appeal upon passing necessary order for revival of the said appeal before the Commissioner.

The appeal shall be disposed of on merit by the appellate authority within a period of eight weeks from date of depositing the cost as directed above.

However, this Court makes it clear that in the event of default by the appellant to deposit the cost and making a formal prayer before the appellate authority for revival of the appeal, this order shall stand vacated.

We further make it clear that we have not gone into the merit of the appeal pending before the Excise Commissioner, West Bengal and all the points are left open to be decided by the appellate authority without being influenced by the observation made by us in this order.

Accordingly, the order of the Hon'ble Single Bench under appeal stands set aside. With the consent of the parties the appeal being **MAT 418 of 2019** and the applications, being **CAN 1 of 2020 (Old CAN No. 869 of 2020)** and, **CAN 2 of 2020** are treated as on days list and **disposed of** by this common order.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

(Saugata Bhattacharyya,J.) **(Subrata Talukdar,J.)**