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M.A.T. 1978 of 2017
With
I.A. CAN 1 of 2017 (Old CAN 11003 of 2017)
With
I.A. CAN 2 of 2017 (Old CAN 11004 of 2017)

M/s. Metacon Industries & anr.

Vs.

The Sales Tax Officer, Jorabagan Charge & Ors.

Mr. N. K. Chowdhury,
Mr. Nilotpal Chowdhury ... for the appellants.

Mr. Anirban Ray, Ld. G.P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh .. for the State.

We are informed that originals of both the applications are not traceable and therefore, photocopies of the same have been filed before us which shall be treated as the originals.

Re: I.A. CAN 1 of 2017 (Old CAN 11003 of 2017)

This application has been filed to condone the delay of 94 days in filing the instant appeal.

We have heard Mr. N. K. Chowdhury, learned counsel for the appellants and Mr. Debasish Ghosh, learned counsel appearing for the respondents / State.

We are satisfied with the reasons assigned in the affidavit filed in support of the application. The delay in filing the instant appeal is condoned.

The application being I.A. CAN 1 of 2017 (Old CAN 11003 of 2017) is allowed.

Re: MAT 1978 of 2017

This appeal by a dealer registered under the provisions of the West Bengal Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 is aggrieved by an order passed by the Fast Track Revisional Authority of Directorate of Commercial Taxes, West Bengal. The said order was passed in an application for revision filed under Section 9 (2) of the Central Sales Tax Act, 1956 read with Section 87A of the Value Added Tax Act, 2003 challenging the correctness of the order dated 28th August, 2012 passed by the Senior Joint Commissioner, Sales Tax, Kolkata (North) Circle affirming the order of the assessing authority denying the claim of export sales made by the appellants to the tune of Rs.35,88,000/-. The only reason for which the revision stood dismissed was by observing that the appellants have not produced records before the revisional authority. The appellants challenged the said order by filing the writ petition being W.P. No.1687(W) of 2017.

The learned Single Bench dismissed the writ petition and declined to interfere with the order passed by the revisional authority primarily on the ground that the appellants failed to avail the opportunity granted by the revisional authority. We are called upon to decide the correctness of such an order.

We have elaborately heard Mr. N. K. Chowdhury, learned counsel for the appellants and Mr. Debasish Ghosh, learned counsel for the respondents / State. In our considered view, one of the approaches which can be taken to a matter such as the case at hand is as done and observed by the learned Single Bench. This is so because a party who has been afforded an opportunity by a statutory revisional authority, if he fails to avail the same, then he cannot be granted further indulgence. Bearing this in mind, we examined the facts of the case and we find from the order passed by the revisional authority that on the second day of hearing, the partner of the appellants appeared and stated to have requested for an adjournment. The revisional authority records that the partner of the appellants could not produce any document relating to the case and therefore, rejected the prayer for adjournment and dismissed the revision petition on the ground that in the absence of books of accounts and other relevant documents, there is no scope for examination of the grievances of the appellants. In our considered view, the approach of the revisional authority should be with a view to ensure that the taxes which are legally leviable and collectable are collected at the appropriate time. Therefore, the authorities should seldom reject the prayer of the dealers on technicalities or hyper-technicalities. It may be true that the partner of the appellants was not in a position to adequately represent the matter but however, if a short accommodation had been granted, the entire exercise of the matter travelling up to this Division Bench could have been well avoided. Therefore, without expressing anything on the merits of the matter, we are of the view that one more opportunity may be granted to the appellants to establish that the transactions were in fact genuine exports for which the appellants will be entitled to produce necessary documents, most of which, according to the appellants, are already on record.

With the above observations, the appeal stands allowed and the order and direction issued by the Learned Single Bench is modified by directing the appellants/petitioners to appear before the revisional authority on a date which may be intimated to the appellants, which shall be within 30 days from the date of receipt of the copy of this judgment and on the said date the appellants shall not seek any adjournment but appear in person or through their authorised representatives, place all materials before the authority and the revisional authority shall take a decision on merits and in accordance with law uninfluenced by any of the observations contained in the impugned order.

M.A.T. 1978 of 2017 is disposed of.

Re: I.A. CAN 2 of 2017 (Old CAN 11004 of 2017)

Since the appeal has been disposed of, the stay application has become infructuous.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)