17 11.08.2022
+ 18 Ct. No. 16
RP
AN

FMA 1767 of 2018

M/s. Paharpur Cooling Towers Limited
vs.
Senior Joint Commissioner, Directorate of Commercial Taxes & ors.
With

FMA 1770 of 2018

M/s. Paharpur Cooling Towers Limited
vs.
Senior Joint Commissioner, Directorate of Commercial Taxes & ors.

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mr. Govind Jethalia
... for the appellant

Mr. A. Ray
Mr. T.M. Siddiqui
Mr. Debasish Ghosh
Mr. S. Mukherjee
... for the State

Heard learned counsel for the parties.

Learned advocate for the appellant submitted that the appellant may be permitted to withdraw the intra-Court appeals and to file statutory appeals before Additional Commissioner of Commercial Taxes, West Bengal. It is submitted by him that the appellant in both the appeals has to deposit a sum equivalent to 15% of the tax in dispute and the appellant is entitled for refund of more than Rs.1,00,00,000/- for the period 2014-2015 and a direction may be issued upon the respondent authorities to adjust 15% pre-deposit amount from the amount refundable.

Learned counsel representing the State respondents submitted that the pre-deposit to be made by the appellant is a statutory condition and the same should not be mixed up with the claim for refund which is to be independently considered.

In our considered view, the submission made by the learned advocate for the respondents is fully justified as the claim on account of refund is a separate issue and the appellant has to agitate the same in the statutory appeal for which liberty is granted.

In the result, the appeals stand dismissed as withdrawn with liberty to the appellant to prefer statutory appeals before the Additional Commissioner, Commercial Taxes, West Bengal within 45 days from the date of receipt of the server copy of this order effecting the requisite amount of pre-deposit and full conditions be complied with. The appellate authority shall entertain the statutory appeals without rejecting the same on the ground of limitation and decide the appeals on merits and in accordance with law. So far as the claim for refund is concerned as observed earlier, liberty is granted to the appellant to prefer statutory appeal in accordance with law.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)