08.03.2022
Item No. 10
Ct. No. 16
AN/RP

M.A.T 191 of 2022
with
IA No.CAN 1 of 2022

Kiswok Industries Private Limited
Vs.
Joint Commissioner, Sales Tax, Radha Bazar Charge & Ors.

Mr. Debanuj Basu Thakur
Mr. M.M. Chandra
.... For the Appellant

Mr. Anirban Ray
Mr. Soumitra Mukherjee
Mr. Nilotpal Chatterjee
.... For Respondents

Leave is granted to the appellant to put in deficit Court fees in course of the day.

This intra-Court appeal is directed against the order dated 22.11.2021 passed in WPA 257 of 2021. In the said writ petition the appellant had challenged the order dated 13.05.2016 passed by the Fast Track Revisional Authority, Commercial Taxes, West Bengal, Bench-III. The learned Revisional Authority has recorded that the learned advocate of the appellant did not contest the issues on remission of tax and claim under Section 8(1) of the Central Sales Tax Act, 1956. According to the appellant this is factually incorrect and thereafter immediately a review application was filed by citing that in the hearing held on 1.04.2016 the representative on behalf of the Revenue submitted that he does not want to contest the issue regarding disallowance of Remission of Tax. The appellant pointed out that the eligibility certificate for Remission of tax in Form 77, that the remission order was passed on 17.08.2009 granting Remission for the period 30.07.2006 to 25.04.2007 and therefore the learned Revisional Authority could not have recorded that as if the appellant's advocate submitted that he did not want to contest the issue on remission of tax. The review application was not disposed of and the appellant received a communication from the Joint Commissioner of Revenue, Law Section, Office of Commissioner of Commercial Tax dated 27.05.2019 stating that the review application could not be traced out in the law section. Furthermore, the appellant was informed that the reviewing authority is not functioning and requested the appellant to seek remedy from higher forum against the order passed by the Revisional Authority. Thereafter, the appellant has approached this Court and filed a writ petition in the year 2021. The learned Single Judge was of the view that the writ petition cannot be entertained on the ground of delay and latches and, accordingly dismissed the writ petition.

We have elaborately heard the parties.

We are of the view that the appellant cannot be fully blamed for not having approached this Court in time as the representation for review of the order passed by the Revisional Authority filed by it, which is immediately after the order passed by the learned Revisional Authority dated 13.05.2016, was not disposed of by the Revisional Authority and only in 2019 the appellant was informed that the review petition was not traceable and the reviewing authority is also not functioning. Thereafter, the appellant has taken legal advice and approached the Court. In any event, if on facts it has been conclusively proved that the appellant has not given up the claim for remission of tax under Section 8(1) of the Act and it has been recorded that as if the appellant did not want to contest the issue and then it would be an error which is apparent on the face of record calling for review. Furthermore, it is the revenue's Representative who had submitted that he does not wish to contest the remission issue. However, the learned revisional authority has noted as if the appellant's advocate has not contested the said issue which can never be the case in the light of eligibility certificate issued and remission order which was passed on 17.08.2009. Therefore, we are of the view that the appellant should be granted an opportunity to go before the learned Revisional Authority once again and place all facts so as to enable the revisional authority to take a decision on merit.

For the above reasons the appeal and the connected application are allowed and the order passed in the writ petition is set aside. Consequentially, the writ petition is allowed and the order passed by the Fast Track Revisional Authority , Commercial Taxes, W.B. Bench-III dated 13.05.2016 is set aside only to the extent, pertaining to the issue regarding disallowance of remission of tax and the matter is remanded back to the learned Revisional Authority for fresh consideration on such aspect alone. In all other aspects the order of the Revisional authority shall remain intact.

We grant liberty to the appellant to raise additional grounds before the revisional authority qua the remission issue and after affording an opportunity to the appellant the revisional authority shall pass a reasoned order.

Urgent photostat certified copies of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)