

Item No.5.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 26.07.2022

DELIVERED ON:26.07.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK**

**M.A.T. No.298 of 2022
With
I.A. No.CAN 1 of 2022**

**Aloke Bhowmick.
Vs.
Additional Commissioner, CGST & CX,
Kolkata South CGST & CX Commissionerate.**

**Appearance:-
Mr. Kalyan Das,
Mr. Amajit De**

..... for the appellant.

**Mr. Kaushik Dey,
Mr. Tapan Bhanja**

... for the respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra Court appeal by the writ petitioner is directed against the order dated 17th January, 2022 in W.P.A. No.21233 of 2021. The appellant had impugned the show cause notice dated 11th October, 2021 issued by the respondent, Service Tax Commissionerate. The contention raised by the appellant before the learned Writ Court as well as before us is that the show cause is barred by limitation. The service rendered by the appellant is exempted service and therefore, the show cause notice is *ab initio* void.

2. The issue as to whether the show cause notice is barred by time and whether there is no allegation of suppression or misstatement is a factual issue and is not purely a legal question. Secondly, whether the type of service rendered by the appellant was an exempted service is also a factual matter, which needs to be adjudicated by the appropriate authority, who has issued the show cause notice.

3. Therefore, we are of the view that the learned Single Bench was fully right in refusing to entertain the writ petition and interdict the show cause notice.

4. Accordingly, the appeal and the connected application are dismissed and the order passed by the learned Single Bench is affirmed with a direction to the appellant to submit the objections to the show cause notice within a period of four weeks from the date of receipt of the server of copy of this judgment and order. On receiving the objections, the concerned authority / respondent shall adjudicate the show cause notice and pass a reasoned order on merits and in accordance with law.

5. No costs.

6. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(BIVAS PATTANAYAK, J.)

NAREN/PALLAB (AR.C)