

Item no. 06

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

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Bivas Pattanayak

MAT 633 of 2017

with

CAN 1 of 2022

CAN 2 of 2022

Shree Shyam Inorganics Private Limited & anr.

vs.

State of West Bengal & ors.

Appearance:

For the Appellants

: Mr. B. P. Chakraborty
Mr. Suvrnil Saha

For the State respondent

: Mr. T. M. Siddiqui
Mr. Debasish Ghosh

Heard on

: 12.07.2022

Judgment on

: 12.07.2022

T.S. Sivagnanam J.:

We have heard learned counsel for the parties present.

This intra court appeal filed by the writ petitioner is directed against the order dated 21.03.2022 passed in WPA 4703 of 2022. The

said writ petition was filed by the appellant for issuance of writ of mandamus to set out the penalty imposed vide notice in Form GST MOV-04 dated 09.02.2022 for consequential reliefs. The learned Single Judge by the impugned order has directed the appellant to file a statutory appeal.

We find that the order passed by the learned Single Judge is just and proper and does not call for any interference especially when the factual matrix has to be gone into to decide as to whether the appellant is entitled to any relief and such exercise cannot be done in a writ petition.

Learned counsel appearing on behalf of the appellant has brought to our notice the fact that since the goods were of volatile in nature, there was a need to release the goods and therefore the appellant had furnished a bank guarantee for a sum of Rs. 9,10,824.00 and also executed a bond for the same amount which the bank guarantee continues to remain valid. Pursuant to execution of the bond and the bank guarantee, provisional release of the goods has been granted to the appellant. The appellant is willing to avail the alternative remedy but their only submission is that a sum of Rs. 9,10,824.00 has been furnished as a bank guarantee and the Court may consider that granting some relief.

Considering such submission, while affirming the order passed by the learned Single Judge and dismissing the appeal, we slightly modify the direction issued by the learned Single Judge by permitting

the appellant to substitute the bank guarantee of Rs. 9,10,824.00 and the appellant is directed to effect the period of proceed as provided under Section 84(1) of the Act within 3 days from the date on which the fresh bank guarantee for a sum of Rs. 8,10,824.00 is to be furnished and if the said amount is paid in terms of Section 84(1) of the Act alongwith the appeal, the appellate authority shall entertain the appeal without reference to the limitation and dispose of the same on merits and in accordance with law.

In the light of the above, the appeal is **dismissed**. Consequently, the connected applications stand disposed of.

(T. S. Sivagnanam, J.)

(Bivas Pattanayak, J.)