Item no. 04

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 740 of 2022
with
IA No. CAN 1 of 2022

Simplex Infrastructures Limited & anr.
vs.
The Senior Joint Commissioner, Commercial Taxes, Large Tax Payer Unit & ors.

Appearance:

For the Appellants	:	Ms. Rita Mukherjee Mr. A. Das
For the State	:	Mr. T. M. Siddiqui Mr. D. Ghosh Mr. S. Mukherjee
Heard on	:	05.07.2022
Judgment on	:	05.07.2022

T.S. Sivagnanam J.:

This intra court appeal is filed at the instance of the writ petitioner against the order dated 26.04.2022 passed in WPA 5848 of 2022 filed by the appellant challenging the order passed by the revisional authority dated 31.07.2019. The revisional authority dismissed the revision petition as the appellant did not appear before the revisional authority inspite of the matter being adjourned on several occasions. From the order passed by the revisional authority dated 31.07.2019, we are able to say that the appellant did not diligently prosecute with the matter and did not cooperate with the revisional authority to dispose of the matter though the revision petition was filed in the year 2018. Furthermore, the revisional authority in its order states that the revision is barred by limitation and as there is delay of about 45 days in filing the revision petition. When the appellant went before the learned writ court, conduct of the appellant was taken note of and the court found that the appellant was not vigilant especially when they are big company having transactions of almost 20 crores in a year. Appellant being advised by a team of professionals cannot be granted any indulgence and, accordingly, the writ petition was dismissed.

We have elaborately heard the learned counsel for the parties.

We fully agree with the observations made by the learned writ court as regards the conduct of the appellant, however, we have slightly different opinion on what relief could have been granted to the appellant. Such conduct of the appellant needs to be deprecated in the sense that the appellant though filed the revision petition, did not contest the matter and did not diligently prosecute with the matter.

Learned counsel for the appellant submitted that upon calculating the period of limitation, the appellant now finds that the revision petition is not barred by limitation and there is no delay. However, such a ground cannot be canvassed before us as the appellant should have canvassed the same before the revisional authority which they have failed to do. By affirming the order passed by the learned writ court, in our considered view, interest of revenue would be affected as the matter has been lingering with several orders and the audit order was passed on 31.08.2016 but till date it remains a paper order and as of date what the appellant has done is a pre-deposit of 15 percent of the tax in dispute. The tax imposed penalty and the late fee as demanded, dated 31.08.2016, is Rs. 4097722.00. Thus, this demand which was raised in the year 2016 could not have been enforced by the Department on account of prolonged litigation and non-cooperation on the part of the appellant before the revisional authority. However, we are conscious of the fact that no tax can be collected without the authority of law. Therefore, the correct amount of tax is to be determined and the appellant should be entitled to pursue the statutory remedies available under the Act. Yet we note the conduct of the appellant in not diligently prosecuting with the matter which was led to the order passed by the revisional authority which was impugned in the writ petition.

Therefore, a delicate balance needs to be made between the parties bearing in mind the interest of revenue as well as interest of the assessee. Hence, we are of the view that the following order would meet the ends of justice.

In the light of the above, the appeal stands **allowed**. Consequently, the writ petition stands disposed of by setting aside the order passed by the revisional authority subject to the condition that the appellant pays 50 percent of the net tax payable under the C.S.T. Act i.e. 50% of Rs. 4097722.00. However, the appellant is granted 15 days time from the date of receipt of the server copy of this order to effect such payment which shall be treated as a deposit upon production of the receipt of the same. The revisional authority shall fix a date for hearing of the revision petition and the appellant be heard and such revision petition be disposed of on merits and in accordance with law. The appellant is not entitled to seek for any further adjournment.

It is however made clear that the amount which is directed to be paid by the appellant shall be treated as a deposit and shall abide by the orders to be passed by the revisional authority.

Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam, J.)

(Bivas Pattanayak, J.)

Saswata/Amitava (AR. CT.)