Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice T.S.Sivagnanam
And
The Hon'ble Justice Bivas Pattanayak

M.A.T. 820 of 2022
with
IA no. CAN 1 of 2022

Shyamal Ghosh
Vs.
Sales Tax Officer, Sales Tax,
Raiganj Charge & Ors.

For the Appellant	Mr. Himangshu Kr. Ray
For the State	Mr. Anirban. Ray, Ld. GP, Mr. T. M. Siddiqui, Ld. AGP, Mr. D. Ghosh, Mr. S. Mukherjee,
For the respondent no.6	Mr. Dipanjan Datta,

Heard on : 12.07.2022.

Judgment on : 12.07.2022.

<u>T.S.Sivagnanam, J.</u>

By consent of the parties the appeal and the application are taken up for hearing together.

This intra-court appeal by the writ petitioner is directed against an order dated 19.05.2022 passed in WPA 8439 of 2022. The appellant filed a said writ petition challenging the proceedings initiated by the Assessing Officer, namely, the first respondent, by issuing notice under Section 56 of the West Bengal Value Added Tax Act, 2003 (in short "WBVAT Act") dated 04.10.2016, the assessment order dated 21.02.2017 and the garnishee proceedings initiated by the Department. The Learned Single Bench by the impugned order has not rejected the writ petition but had directed the respondents to file their affidavits-in-opposition.

The appellant is aggrieved primarily on the ground that no interim protection was granted by the Learned Single Bench while directing the affidavits-in-opposition to be filed. This is how the appellant is before us by way of this intra-court appeal.

We have heard both the parties.

In our considered view, no useful purpose would be served in passing an order in this appeal while keeping the writ petition pending. We say so because the period in question, for which tax has been demanded, is 2014-15 and considering the time lapse, it would not augur well for the revenue to contest the writ petition more so when the grounds raised by the appellant challenging the assessment order is on the ground of violation of principles of natural justice.

Therefore, with the consent of the learned Advocates appearing for either side, the writ appeal and the writ petition are disposed of by this common judgement and order. The appellant case is that the notice issued under Section 46 of the WBVAT Act was not received and the address to which it was sent, was not the complete address of the appellant. Further, on merits also the appellant seeks to canvass certain issues which we are not inclined to consider as disputed questions of fact are involved in such issues. We need not go into the controversy as to whether the notice was sent to the correct address or not. Since the matter is of 2014-15 and only one notice was issued to the appellant before passing the assessment order dated 21.02.2017, we are of the view that one more opportunity can be granted to the appellant. However, such opportunity shall be subject to certain conditions.

In the result, the writ appeal and the writ petition stand disposed of with the following directions:-

The appellant is directed to deposit with the first respondent a sum of Rs. 50,000/- within a period of three weeks from the date of receipt of the server copy of this order. Upon such deposit, the appellant shall be entitled to treat the assessment order dated 21.02.2017 as a show cause notice, submit their objections within 15 days from the deposit of the said sum of Rs. 50,000/-. Thereafter, the Assessing Officer, namely the first respondent, shall afford an opportunity of personal hearing to the authorized representative of the appeal and redo the assessment in accordance with law.

If the appellant complies with the above conditions of deposit of a sum of Rs. 50,000/-, the garnishee proceedings and the attachment of the bank account of the appellant shall be lifted. In the event, the appellant fails to comply with the above condition, the benefit of this order will not enure in favour of the appellant and the writ appeal would stand automatically dismissed leaving the order passed in the writ petition intact. The appellant shall cooperate with the assessment proceedings and the Assessing Officer shall complete the proceeding at the earliest but not later than six weeks from the date on which the personal hearing is concluded.

The appeal along with the connected application and the writ petition are, accordingly, disposed of.

(Bivas Pattanayak, J.) **(T.S.Sivagnanam, J.)**

KOLE/S. Banerjee
Assistant Registrars (Court)