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. 821 of 2022
with
IA no. CAN 1 of 2022

Sudipta Mahanta
Vs.
Tax Recovery Officer, Sales Tax,
Raiganj Circle & Ors.

For the Appellant	Mr. Himangshu Kr. Ray Mr. Abhijat Das
For the State	Mr. Anirban Ray, GP Mr. S.Mukherjee Mr. D.Ghosh
For the respondent no.6	Mr. Baidurya Ghosal Ms. Avipsa Dutta Roy

Heard on : 07.07.2022.

Judgment on : 07.07.2022.

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

This intra Court appeal is directed against the order dated 19th May 2022 in W.P.A. no. 8441 of 2022. The impugned order is not a final order but the appellant is aggrieved on the ground that the learned single Bench did not grant any interim orders while directing the respondents to file affidavit-in-opposition.

After we have elaborately heard Mr. Himangshu Kr. Ray, learned advocate for the appellant and the learned Government advocate, we are of the view that the order in the writ petition being the assessment order under the provisions of West Bengal Value Added Services Act, 2003 (for short "the Act"), the appellant should avail the alternate remedy provided for under the Act against such assessment order. We make such observation because facts need to be adjudicated which cannot be done in a writ proceeding and the appropriate procedure to be adopted is to prefer an appeal.

Learned advocate appearing for the appellant, though had raised various grounds touching upon the merits of the matter, we cannot adjudicate those grounds in this appeal as the scope of this appeal is as to the correctness of the order passed by the learned single Bench refusing to grant an interim order till the affidavit-in-opposition is filed. Thus, considering the facts and circumstances of the case, we are of the view that no useful purpose will be served by keeping the writ petition pending as the appellant should avail the alternate remedy provided for under the Act, as such the remedy is not only effective but efficacious as well.

In the result, the writ petition is disposed of by directing the appellant/writ petitioner to approach the appellate authority by effecting a pre-deposit of 15 per cent of the disputed tax and such deposit shall be made within two weeks from the date of receipt of the server copy of this order. On such deposit, the appellant shall be entitled to file an appeal before the appellate authority who shall entertain the appellant without rejecting the same on the ground of limitation.

Consequently, the recovery proceeding is required to be kept in abeyance. However, we make it clear that the attachment effected on the bank account of the appellant/writ petitioner shall continue till the appellant/writ petitioner's deposit of 15 per cent of the disputed tax. However, in the interregnum, the department shall not effect any recovery from the appellant's bank account.

Accordingly, the appeal being M.A.T. 821 of 2022 along with the application being IA no. CAN 1 of 2022 is **disposed of**.

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

Saswata
Assistant Registrar (Court)