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

Lohia Jute Press Pvt. Ltd.
Vs.
State Of West Bengal & Ors.

For the Appellant	Mr. Sweta Mukherjee, Mr. A. Sarkar,
For the State	Mr. Anirban. Ray, Ld. GP, Mr. T. M. Siddiqui, Ld. AGP, Mr. D. Ghosh, Mr. S. Mukherjee, Mr. N. Chatterjee,

Heard on : 12.07.2022.

Judgment on : 12.07.2022.

T.S.Sivagnanam, J.

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

We have heard Ms. Sweta Mukherjee, learned Advocate for the appellant and Mr. Nilotpal Chatterjee, learned Advocate, for the State respondents.

Identical impugned order was challenged by the appellant in MAT 442 of 2022 and by an order dated 22.04.2022 we have granted interim stay and allowed the appeal and directed the suspension of the garnishee order. The said order reads as follows:

> "This intra-Court appeal is directed against the order dated 24.03.2022 passed in WPA 5012 of 2022 refusing to pass an ad interim order as sought for by the appellant/writ petitioner. The writ petition was filed challenging the order passed by the authority under West Bengal Value Added Tax Act, 2003 (WBVAT) dated 27.06.2013, 10.07.2014 and 26.09.2019. These orders are the orders passed by the assessing officer, the appellate authority and the revisional authority respectively.
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> The issue involved in this writ petition is whether the activity done by the appellant is sovereign function as they are engaged in printing of electoral photo identity cards pursuant to the contract given by the Election Commission of India. The present assessment pertains to supply of printed photo identity cards to the State of Uttarakhand. The appellant had placed reliance on the communication sent by the Chief Electoral Officer, Uttarakhand stating that no sales tax is chargeable under the rules of Printing of Electoral Photo Identity Cards and the appellant should not include any sales tax while submitting bill to the Chief Electoral Officer, Uttarakhand. Based on such document the appellant has not collected

sales tax and, however, in the assessment proceeding the assessing officer held that the activity is one of works contract as there is deemed sale involved and accordingly completed the assessment. Aggrieved by that the appellant approached the appellate authority, who was also of the view that the reference to the circulars by the appellant was not tenable as those circulars and letters were issued during the period when WBVAT Act was not in force.

Prima facie we are of the view that the correct approach as to how such communication to be interpreted as the contents of the communication is more important and germane. The petitioner/appellant has also placed reliance on the decision of West Bengal Commercial Taxes Appellate and Revisional Board in Revision VAT Cases No.1249 of 2010-11 and 1250 of 2010-11 wherein the stand of the appellant was accepted insofar as the supply of photo identity cards done by them dated 15.10.2015. On revision before the revisional authority the appellant was unsuccessful.

Considering the facts and circumstances of the case as well as the orders passed by the revisional Court dated 15.10.2015 as well as the letters given by the Chief Electoral Officer, we are of the view that the appellant has made out a prima facie case for grant of interim order. If interim orders are not granted to the appellant, the respondents would proceed to recover the tax levied on the appellant and this will lead to multiplicity of proceedings. Therefore the balance of convenience is also in favour of the appellant and that apart hardship would be caused to the appellant as the findings in the impugned proceeding may have a cascading effect on the appellant's activities as they are carrying on printing activity for several States in the country. That apart, the Chief Electoral Officer has given a letter on 25.01.1995 stating that no sales tax is chargeable under the rules for Photo Identity Card which is printed and supplied by the appellant.

Considering all these facts, we are of the view that the orders which are impugned in the writ petition should not be given effect to and shall remain stayed till the disposal of the writ petition. We make it clear that the observations made by us in this order will not in any manner prejudice the rights and contentions of the respondents which they may raise in the affidavit-in-opposition to the writ petition and the observations made by us are only to support the conclusion arrived at by us that the appellants have made out a case for grant of interim order in pending writ petition.

Hence, the appeal and the application stand **allowed**. In the light of the above, the Garnishee Order shall remain suspended and consequently, the respondent authorities are directed to lift the attachment of bank account within three days from receipt of the server copy of this judgment by duly intimating the bank to do so.

As requested by the learned counsel for the State, time for filing affidavit-in-opposition is extended by

> six weeks from date. Reply, if any, be filed within three weeks thereafter."

There is no distinguishing feature in the case on hand and therefore the above order can be applied to the present appeal as well.

Hence, the appeal and the application stand allowed and the garnishee order shall remain suspended and the respondent authorities are directed to lift the attachment of the bank account within three days from the date of receipt of the server copy of this judgment by duly intimating the respondent bank to do so. The state respondent shall file affidavit in opposition within four weeks from date. Reply, if any, within three weeks thereafter.

List the writ petition along with WPA 5012 of 2022.

The appeal along with the connected application is, accordingly, disposed of.

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

KOLE
Assistant Registrar (Court)