

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

Paras Pan Products Private Limited & Anr.
Vs.
The Assistant Commissioner, State Tax,
Barasat Charge & Ors.

For the Appellants

Mr. Ankit Kanodia
Mr. Himangshu Kumar Ray
Ms. Megha Agarwal

For the Respondents
/State

Mr. S. Mukherjee
Mr. D. Ghosh
Mr. V. Kothari

Heard on : 05.07.2022.

Judgment on : 05.07.2022.

T.S.Sivagnanam, J.

This intra Court appeal by the appellants is directed against the order dated 2nd May 2022 in W.P.A. 7405 of 2022.

The appellants are aggrieved by the order passed by the Writ Court in not granting interim orders till the writ petition is heard. The learned Government advocate appearing for the respondents submitted that this intra Court appeal is not maintainable under Clause 15 of the Letters Patent Act and in this regard, the learned government advocate seeks to place reliance on the decision of the Hon'ble Supreme Court in ***Shyam SHEL & Power Ltd. & Anr. –vs- Shyam Steel Industries Ltd. in Civil Appeal No. 1984 of 2022 arising out of SLP (C) No. 4080 of 2022.***

In our considered view, since the issue lies in a narrow canvas, we are of the view that the writ petition itself can be disposed of. Thus, with the consent of both the parties, the writ petition is taken up for hearing.

The appellants are aggrieved by an assessment order passed under Section 74 (9) of the WBGST Act, 2017 dated 12th October 2020. Aggrieved by the same, the appellants had filed appeal before the Senior Joint Commissioner of State Tax, North 24 Parganas circle under Section 107 of the Act and the appeal was dismissed by order dated 11th February 2022. At the time of preferring the appeal, the appellants had pre-deposited 10 per cent of the disputed tax.

Aggrieved by the order passed by the learned appellate authority, the appellant filed the writ petition. The learned Single Bench had directed affidavit-in-opposition to be filed and, thereafter, the matter to be heard. Considering the grounds raised by the appellants in the writ petition, we are of the view that the dispute lies in a very narrow canvas. The appellants would contend that before the assessment order dated 12th October 2020 was passed, no opportunity was granted to the appellants and there has been violation of principles of natural justice and more particularly when the date of hearing fixed by the assessing officer was on 18th September 2020 and at that point of time, the appellants' factory was not working and it was during the COVID pandemic period.

From the perusal of the show cause notice dated 10th September 2020, it is seen that a search was conducted in the business premises of the appellants and certain physical documents, stakes and accounts for the relevant period were taken and the appellants were directed to produce records of documents in terms of Section 71 (2) of the Act. The show cause notice refers of few dates on which the appellants had sought for time. Those dates and events preceded the issuance of show cause notice dated 10th September 2020. Since, the date of personal hearing was on 18th September

2020, that is during the peak COVID season, the appellants contended that they could not appear before the officer, resulting in the impugned order.

Considering the peculiar facts and circumstances of the case, we are of the view that one more opportunity can be granted to the appellants, more particularly, when the appellants had already deposited 10 per cent of the disputed tax while preferring the appeal. Therefore, we are inclined to pass appropriate order so that the appellants are afforded an opportunity to put forth their submissions. We make it clear that this order shall not be treated as a precedence.

For the reason stated above, the appeal and the writ petition are **disposed of** by directing the appellants to treat the assessment order dated 12th October 2020 as show cause notice and the appellants shall submit their objection/reply within two weeks from the date of receipt of the server copy of this order after which the appellants and/or their authorized representative be afforded an opportunity of personal hearing by the concerned authority and a speaking order shall be passed on merit and in accordance with law.

Consequently, the order passed in the appeal dated 11th February 2022 stands set aside. The pre-deposited tax made by the

appellants being 10 per cent of the disputed tax shall remain in deposition and shall abide by the interim orders passed by the assessing officer.

We make it clear that we have not examined the merits of the case and it is open to the appellants to canvas all grounds before the assessing officer.

The connected application being IA no. CAN 1 of 2022 is accordingly disposed of.

(T.S.Sivagnanam, J.)

(Bivas Pattanayak, J.)

Saswata/Amitava Nag (ARs)(Court)