Item No.19.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 24.06.2022

DELIVERED ON:24.06.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.927 of 2022
With
I.A. No.CAN 1 of 2022

M/s. Joyous Block & Panels Private Limited.

Vs.

Commercial Tax Officer, Ballygunge Charge & Ors.

Appearance:-
Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Mr. Kaushal Agarwal ..... for the appellant.

Mr. Anirban Ray, Ld. G.P.,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee,
Mr. Varun Kothari ... for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. This intra-Court appeal filed by the writ petitioner is on the plea that the learned Single Bench while entertaining the writ petition and directing affidavit-in-opposition to be filed by the official respondents, did not grant any interim order. Mr. Ghosh, learned Government Advocate appearing for the respondents, submitted that there was no specific prayer made by the writ petitioner before the Learned Single Bench for grant of order of stay.

2. Be that as it may, since the facts of the case lie in a very narrow campus, we are inclined to dispose of not only the intra-Court appeal but the writ petition as well with the consent of the learned Advocates appearing on behalf of either side.

3. The appellant/writ petitioner is aggrieved by an order of attachment of the appellant's overdraft account maintained with their bank. The attachment is by way of initiation of garnishee proceedings, which is a sequel to an order of assessment dated 20th June, 2019 by which the total tax and interest payable by the appellant was determined by the Assessing Officer at Rs.1,37,42,621/-.It is submitted by Mr. Shraff, learned Advocate appearing for the appellant that as against the said order, the appellant had preferred an appeal under Section 84 of the Act which had to be filed online and while choosing the correct option of the authority before whom the Memorandum of Appeal should be filed, the appellant had wrongly chosen the option as "Deputy Commissioner, Ballygunge Charge" instead of "Joint Commissioner, State Tax, West Bengal, Kolkata South Circle". Therefore, it is submitted that prejudice has been caused to the appellant on account of the attachment of the overdraft account and that overdraft account cannot be attached.

4. The learned Government Advocate, on the other hand, would submit that the order having attained finality, the appellant has to pay the entire amount as demanded by the Assessing Officer and there is no error in not granting any interim order

in favour of the appellant, more particularly when there was no specific prayer for grant of interim order. We find from a show cause notice issued by the Joint Commissioner, State Tax, West Bengal, Kolkata South Circle dated 14th June, 2022, the appropriate appellate authority has taken on file the appeal filed by the appellant. Therefore, the defect, which was stated to have occurred while filing the appeal online appears to have been rectified and the appellate authority is in seisin over the matter. However, the appellate authority cannot entertain the appeal without hearing and without the appellant complying with the mandatory pre-deposit condition as contemplated under the provisions of the W.B.VAT Act. That apart, no useful purpose would be served by attaching an overdraft account by way of garnishee proceedings.Therefore, in our view, such attachment needs to be lifted however, subject to the condition that the appellant pays the mandatory pre-deposit payable in terms of the relevant provisions of the W.B.VAT Act.

5. In the result, the writ appeal, connected application as well as the writ petition are disposed of subject to the following conditions/directions:-

(a) The appellant is directed to comply with the mandatory pre-deposit condition within a period of two weeks from the date of receipt of the server copy of this judgment and order.

(b) On compliance of condition no.(a), the concerned authority shall issue necessary orders to the concerned bank lifting the attachment of the overdraft account of the appellant.

(c) The appellant shall furnish the full details of the bank accounts of the dealer to the Assessing Officer within two weeks from the date of receipt of the server copy of this judgment and order.

(d) Upon compliance of the aforementioned conditions, the appellate authority, namely, Joint Commissioner, State Tax, West Bengal, Kolkata South Circle shall hear the appeal on the date fixed, i.e. on 18th July, 2022 at 12.30 P.M. and decide the matter on merits and in accordance with law. The appellant shall not be entitled to seek for any adjournment on the said date and either the appellant or the authorised representative of the appellant shall appear before the appellate authority and place its submissions for consideration.

(e) It appears that the appellant has also parallelly filed an application before the Tribunal. Mr. Shraff, learned

Advocate appearing for the appellant submitted that the appellant will withdraw the petition filed before the Tribunal.

6. With the aforesaid direction, the appeal and the connected application and the writ petition are disposed of.

7. No costs.

8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)