

Item No.1 to 3.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON:22.07.2022 & 11.08.2022

DELIVERED ON:11.08.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.946 of 2022

With

I.A. No.CAN 1 of 2022

Imax Infrastructure Pvt. Ltd.

Vs.

**Deputy Commissioner, Directorate of Revenue Intelligence
and Enforcement & Ors.**

and

M.A.T. No.947 of 2022

With

I.A. No.CAN 1 of 2022

Prakash Ply Centre Pvt. Ltd.

Vs.

**Deputy Commissioner, Directorate of Revenue Intelligence
and Enforcement & Ors.**

and

M.A.T. No.948 of 2022

With

I.A. No.CAN 1 of 2022

Ascan Plyboard India Pvt. Ltd.
Vs.
Deputy Commissioner, Directorate of Revenue Intelligence
and Enforcement & Ors.

Appearance:-

Mr. J. A. Khan,
Mr. Himangshu Kr. Ray,
Mr. T. A. Khan,
Mr. Bhaskar Sengupta

..... **for the appellants.**

Mr. T. M. Siddique,
Mr. Debasish Ghosh

... for the State.

JUDGMENT

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

1. The year of instituting these appeals in the order dated 22nd July, 2022 shall be read as "2022" instead of "2021". Let the same be corrected accordingly.

2. These intra-Court appeals are directed against the order dated 10th June, 2022 passed in W.P.A. No.9766 of 2022, W.P.A. No.9789 of 2022 and W.P.A. No.9752 of 2022 respectively. The orders impugned before us are interim orders passed by the learned Single Bench whereunder the learned Single Bench was of the prima facie view that the writ petitions cannot be thrown out at the motion stage on the ground of availability of

alternative remedy and that the writ petitions have to be heard and decided on merits. With such observation, the respondents were directed to file their affidavit-in-opposition within a time frame giving liberty to the appellants / writ petitioners to file their reply thereto. The appellants are not aggrieved by such an order nor the respondents have preferred any appeal against such an order. The appellants are aggrieved by the penultimate portion of the order whereunder and by which the learned Writ Court was prima facie satisfied that the appellants / writ petitioners have been able to make out a case for an interim order and considering the said aspect, there will be a conditional stay of the impugned adjudication subject to deposit of 10% of the demand in question within a time frame and if the appellants comply with the same, the respondents were directed not to initiate any coercive action against the appellants.

3. The learned Advocate appearing for the appellants would contend that the learned Writ Court having prima facie found that the writ petitions are maintainable even though an alternative remedy is available, ought to have granted stay of the impugned orders in the writ petitions and ought not to have directed deposit of 10% of the demand. Further it is submitted

that several grounds have been raised in the writ petitions touching upon the jurisdiction of the matters and as to how there has been procedural infraction and such other grounds, which will render the order impugned in the writ petitions as a nullity. Without prejudice to the said submission, the learned Advocate for the appellants would also submit that assuming an appeal was preferred under Section 107 of the West Bengal Goods and Services Tax Act, 2017, 10% of the tax alone is required to be deposited as a condition precedent for filing a statutory appeal before the concerned Joint Commissioner.

4. The learned Government Advocate by referring to the application made under Article 226 of the Constitution of India, rules framed by the High Court at Calcutta and in particular, Rule 51 of the Rules submitted that in all applications involving revenue where an assessment has already been made or upheld, no order shall be made staying the realisation thereof, unless the assessee making the application, gives security as may be deemed adequate by the Court, for the due payment of the amount assessed to tax. The amount of security, the time within which it shall be furnished and the manner of furnishing, shall be at the discretion of the Court making the order. Where such

security has been ordered ex parte, any party to the application upon being served with the Writ may apply to the Court for enhancing or reducing the same. Therefore, it is submitted that the learned Single Bench has exercised discretion and this Court in an intra Court appeal may not disturb such an order and the appellants should be directed to comply with the direction or in the alternative, the appellants should be directed to prefer an appeal under Section 107 of the Act.

5. After we have elaborately heard the learned Advocates for the parties, we are of the considered view that the learned Writ Court was right in protecting the interest of the appellants till the disposal of the writ petitions as the appellants were able to make out a prima facie case to the satisfaction of the learned Single Bench pursuant to which the writ petitions have been entertained and affidavits-in-opposition have been directed to be filed by the respondents. The direction issued by the learned Writ Court by directing the deposit of 10% of the demand in question should be construed to be in compliance of Rule 51 of the aforementioned Rules. However, we have a small reservation as regards whether deposit of 10% of the entire demand has to be

directed or only deposit of 10% of the tax in dispute has to be directed to be made.

6. Rule 51 of the Rules gives power to the Court to grant stay of realisation of any amount assessed as tax subject to the condition that the aggrieved party gives security and such security must be in satisfaction of the Court that it will be adequate and protecting the interest of the revenue. Therefore, the learned Single Bench rightly exercised its discretion and bearing in mind the mandate in Rule 51 has issued a direction.

7. However, we find that the direction to deposit 10% of the entire demand would be onerous as had the appellants file appeals before the Joint Commissioner under Section 107 of the Act, the appellants were required to deposit only 10% of the tax in dispute. Therefore, we are of the view that a slight modification requires to be made to the orders impugned in these appeals.

8. Accordingly, the appeals are partly allowed and the directions issued by the learned Single Bench directing deposit of 10% of the demand in question stands modified as deposit of

10% of the tax in dispute. The appellants are granted 30 days' time from the date of receipt of the server copy of this order to make the deposit before the appropriate authority and if the same is complied with, no coercive action shall be taken against the appellants for recovery of the balance amount as demanded.

9. The respondents are directed to file their affidavits-in-opposition to the writ petitions within ten days from date; reply thereto, if any, be filed by the appellants within a period of seven days therefrom.

10. Since the appeals are partly allowed, all connected applications are deemed to have been disposed of accordingly.

11. No costs.

12. 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)