Item No.21.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 30.08.2022

DELIVERED ON:30.08.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 1051 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Shri Ambika Metaliks Pvt. Ltd.
Vs.
The Commercial Tax Officer, Fairley Charge & ors.

Appearance:-

Mr. Anil Kumar Dugar,
Mr. Rajarshi Chatterjee ..... for the appellant.

Mr. T. M. Siddique,
Mr. Debasish Ghosh .... for the respondents

JUDGMENT

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

Re: I.A. CAN 2 of 2022

1. This application has been filed to condone the delay of 75 days in filing the instant appeal.

2. We have heard Mr. Anil Kumar Dugar, learned counsel for the appellant and Mr. T. M. Siddique, learned counsel appearing for the respondents.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. The delay in filing the instant appeal is condoned.

4. The application being I.A. CAN 2 of 2022 is allowed.

Re: MAT 1051 of 2022

5. This intra Court appeal is directed against the order dated 24th March, 2022 in W.P.A. No.4895 of 2022. The appellant had filed the writ petition challenging an order passed by the West Bengal Commercial Taxes Appellate and Revisional Board dated 19th February, 2018. The appellant had filed a revisional application before the concerned Board challenging the order passed by the Senior Joint Commissioner, Commercial Taxes, Chowringhee Circle, the appellate authority, dated 8th March, 2016. The order passed by the revisional Board dated 19th February, 2018 is an order dismissing the appeal on the ground that the appellant did not

appear when the case was called not once but on several dates. The learned Single Bench was not inclined to exercise its jurisdiction on the ground that the appellant despite opportunity did not produce the records before the revisional Board.

6. In our considered view, rejecting a revision petition on the ground of non-appearance of the party, would in fact, prejudice the interest of revenue. The tax will remain unrecovered by citing that the appellant had challenged the order passed by the revisional Board by way of a writ petition and subsequently by way of this intra Court appeal.

7. At the relevant point of time, when an appeal was filed before the first appellate authority, the law did not mandate any pre-deposit. Therefore, though the assessment order was passed as early as on 18th august, 2014, the same continues to remain a paper order. It appears that subsequently the appellant had produced C forms but yet there was a deficit and the deficit is to the tune of about Rs.2.75 crores. Therefore, this Court is of the view that balancing the interest of the revenue at the same time considering the plight of the assessee, an appropriate direction can be issued by placing the appellant on terms to

enable it to pursue the revision petition before the revisional Board.

8. In the light of the above, the appeal and the connected application are allowed and the order passed in the writ petition is set aside with a direction to the appellant to pay 15% of the tax outstanding and payable as on date for which the assessing officer shall issue a notice computing the tax as payable as on date and such communication shall be issued to the appellant within 10 days from the date of receipt of the server copy of this order. On receipt of the communication, the appellant is granted seven days time to effect payment of 15% of the said tax demand. On such compliance, the appellant shall produce the receipt before the revisional Board and the revisional Board is directed to take up the revision petition and decide the same on merit and in accordance with law and for such purpose subject to compliance of the condition, the revision petition will stand restored to the file of the revisional authority.

9. We make it clear that this order has been passed considering the peculiar facts and circumstances of the case and not to be cited as a precedent.

10. In the event the appellant does not comply with the above directions within the time permitted, the benefit of this order will not enure in favour of the appellant and this appeal will automatically stand dismissed without reference to this Court.

11. There shall be no order as to 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)