Item no. 01

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Bivas Pattanayak

MAT 1062 of 2022
with
CAN 1 of 2022

Sailesh Chandra Dutta
vs.
Assistant Commissioner, Raiganj Charge, Raiganj & anr.

Appearance:

For the Appellants	:	Mr. Vinay Kumar Shraff Ms. Priya Sarah Paul Mr. Kaushal Agarwal
For the State respondent	:	Mr. Anirban Ray, learned G. P. Mr. T. M. Siddiqui,learned A.G.P. Mr. N. Chatterjee Mr. V. Kothari
Heard on	:	13.07.2022
Judgment on	:	13.07.2022

T.S. Sivagnanam J.:

We have heard learned counsel for the parties present.

This intra court appeal filed by the writ petitioner is directed against the order dated 08.07.2022 passed in WPA 14620 of 2022 by which the writ petition was dismissed.

On going through the order we find that what read in the mind of the learned Single Judge was that the assessment order dated 21.05.2019 had attained finality and when the garnishee proceedings were initiated by the Department to recover the tax dues, the petitioner approached the court belatedly in the year 2022 and therefore relief cannot be granted. We note that there were multiple prayers in the writ petition and one such prayer was to quash the final assessment order dated 21.05.2019. This appears to not have been placed before the learned writ court when the writ petition was heard. Be that as it may, the final order dated 21.05.2019 is an ex parte order. The show cause notice dated 10.04.2019 was served on the appellant and a reply to the same has been furnished by the appellant which is stated to have been acknowledged by the Department vide e-acknowledgment. The case was to be discussed and hearing was fixed on 25.04.2019. The appellant sought for an adjournment on certain personal grounds. The case was to be discussed on 13.05.2019 at 11.30 A.M. On the said date, the appellant or their authorized representative did not appear. Consequently, the authority proceeded ex parte and passed the final order on 21.05.2019.

The appellant has come forward with the case that they had engaged an advocate and on account of certain personal inconvenience of the learned advocate he could not appear in the matter. Apart from that there was also a resolution passed by the concerned Bar Association on certain issues which prevented the learned advocates in that area from appearing before any authority or any court of law.

All these submissions are mentioned in the affidavit filed in support of the writ petition but they being fully factual, we cannot adjudicate the correctness of the same. Nevertheless, we note that the explanation offered by the appellant to the show cause notice has been adhered to or even referred to in the final order dated 21.05.2019. This, in our considered opinion, is incorrect as even an ex parte order, it should be a reasoned order after noting the reply given by the assessee to the show cause notice.

Considering the peculiar facts and circumstances of the case, we are of the view that one more opportunity can be granted to the assessee. However, such opportunity shall be subject to compliance of certain conditions. The total demand of tax, penalty and interest is Rs. 3,02,75,172.00 of which the tax component is Rs. 1,29,38,102.00. Out of the said amount, a sum of Rs. 11 lakhs has been recovered by way of bank attachment leaving a balance of Rs. 1,18,38,102.00. Out of the said amount, the appellant has paid Rs. 33,28,050.00, thus, leaving a balance tax liability of Rs. 85,18,052.00. It is made clear that this is without including interest and penalty. With a view to afford one more opportunity to the appellant and also taking note of the interest of revenue because the Department was not able to recover the tax quantified even though the final order was passed on 21.05.2019 and in the year 2022 they were able to recover a portion of the amount by way of bank attachment and subsequently the assessee himself has remitted the sum of Rs. 33,21,050.00.

In the light of the above, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition stands disposed of by directing the appellant to pay a sum of Rs. 35 lakhs to the appropriate authority within a period of three weeks from the date of receipt of the server copy of this order. If the said amount is paid, then the appellant shall be entitled to treat the final order dated 21.05.2019 as a show cause notice and submit their objections within 7 days from the date on which the payment is effected. On receipt of the said reply/objections, the concerned authority shall adjudicate the matter and pass fresh order on merits and in accordance with law. Till such orders are passed, no coercive action be initiated against the appellant for recovery of the balance amount and it shall abide by the orders that may be passed by the concerned authority in terms of the above directions. In the event, the appellant fails to comply with the above directions within the time permitted, benefit of this order will not enure to the appellant and the appeal will stand automatically dismissed without reference to this court. The concerned adjudicating authority shall discuss the case of the appellant's authorized representative by affording an opportunity of hearing and pass a reasoned order on merits and in accordance with law within three weeks from the date on which the personal hearing is concluded. The assessee shall cooperate in the adjudication and no adjournment shall be granted.

However, we make it clear that the above directions have been issued considering the peculiar facts and circumstances of the case and shall not be treated as a precedent.

In the light of the above, the appeal stands **allowed**. Consequently, the connected application stands disposed of.

(T. S. Sivagnanam, J.)

(Bivas Pattanayak, J.)

Swarup/Amitava (AR. CT.)