Item no. 06

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1134 of 2022
with
IA No. CAN 1 of 2022

Amar Kumar Saha
vs.
The Joint Commissioner, Howrah CGST & CX Commissionerate
Ors.

Appearance:

For the Appellant	:	Mr. Ankit Kanodia Mr. Himangshu Kr. Ray Ms. Megha Agarwal
For the Respondents No.1, 2 and 3	:	Mr. Uday Shankar Bhattacharya Mr. Tapan Bhanja
For State	:	Mr. A. Ray, Learned G.P. Mr. T.M. Siddiqui Mr. Debasish Ghosh
For UOI	:	Ms. Avipsa Sarkar
Heard on	:	02.08.2022
Judgment on	:	02.08.2022

T.S. Sivagnanam J.:

This intra-Court appeal has been filed by the appellant is directed against the order dated 20.06.2022 passed in WPA 9823 of 2022. In the said writ petition the appellant challenged a show cause notice dated 20th April 2022 issued by the Joint Commissioner, Howrah GST and Central Excise Commissioner demanding service tax.

The appellant contended that soon after the show cause notice was received by him, he has addressed the same to the Public Works Department, for whom he has rendered service, bringing to the notice of demand of service tax and requested them to release the fund so that it can be remitted to the Service Tax Commissioner. In response to such request a reply was sent by the Executive Engineer, Hooghly Highway Division No.1, Public Works (Roads) Directorate dated 03.06.2022 which has the following effect:

"Memo No. : 733/9/105 *Date 03.06.2022*

To
Ankit Kanodia
39A, Jorapukur Square Lane,
Room No. 205, Behind Girish Park,
Kolkata-700006.

Sub: Payment of Service Tax to M/s. Amar Construction

Ref.: Your Memo No. Amar Kr. Saha/PWD/ST/16-17/17-18 dated 06.05.2022 and Amar Kr. Saha/PWD/ST/16-17/17-18 dated 19.05.2022

Sir,

Apropos to the subject and reference above, this is to inform you that the dates of completion of Services provided by M/s. Amar Construction as mentioned by you were before July

2017 i.e. before the GST regime. Hence those services comes under the purview of the Service Tax Rules, 1994.

Now this is to be mentioned herein that M/s. Amar Construction had not raised any claim for Reimbursement of Service Tax for the services rendered by them for those works along with payment deposit challan for Service Tax to this office which made this office unable to process any reimbursement of claim for Service Tax.

This is for your kind information please.

Yours faithfully

Executive Engineer
Hooghly Highway Division No. 1
Public Works (Roads) Directorate
Date: 03.06.2022"

The above communication was sent to the authorized representative of the appellant. Since the representation was made to authorized representative by the appellant thereafter another representation was sent on 11.06.2022 to the Executive Engineer, Hooghly Highway Division No.1, Public Works (Roads) Directorate for which the appellant has not received any reply. In such circumstances, the appellant moved the learned writ Court.

In our considered view, the learned writ Court was fully justified in not entertaining the challenge to the show cause notice but observed that for effective adjudication of the matter the service recipient, namely, Executive Engineer, Hooghly Highway Division No.1, Public Works (Roads) Directorate should also be heard in the matter. In the instant case, the authority has issued show cause notice only to the appellant, who is the service provider. Furthermore, the appellant's case is based upon the reply dated 03.06.2022 received from Executive Engineer, Hooghly Highway Division No.1, Public Works (Roads) Directorate. Therefore, to have a binding adjudication and also to protect the interest the appellant assessee as well as the revenue Department, we, while affirming the order passed by the learned Single Judge direct the Adjudicating Authority to issue notice to the Executive Engineer, Hooghly Highway Division No.1, Public Works (Roads) Directorate and also hear them when the show cause notice is adjudicated and not restrict the adjudication only in respect of the appellant.

In the light of the above, while declining to interfere with the order passed by the learned writ Court we direct the respondent No.1 to issue notice to the appropriate authority of the Public Works Department, Government of West Bengal and direct them to appear for a personal hearing and on which date the appellant shall also be directed to appear and after considering the submissions of the appellant as well as the authority from the Public Works Department, the show cause notice shall be adjudicated on merits and in accordance with law and a reasoned order be passed thereafter. The above exercise shall be completed by the respondent No.1 within a period of eight weeks from the receipt of the server copy of this order. By that time no coercive action shall be initiated against the appellant.

We make it clear that the Public Works Department shall not be entitled to urge the issue relating to limitation.

In view of the above, the instant appeal stands **disposed of**. Consequently, the connected application stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)