

Item No.7 & Supple.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 08.09.2022

DELIVERED ON:08.09.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.1169 of 2021

With

I.A. No.CAN 1 of 2021

with

I.A. No.CAN 2 of 2022

Shri Kaushal Kadel.

Vs.

State of West Bengal & Anr.

And

M.A.T. 1170 of 2021

With

I.A. No. CAN 1 of 2021

With

I.A. No. CAN 2 of 2022

Shri Kaushal Kadel.

Vs.

State of West Bengal & anr.

Appearance:-

Mr. Nilotpal Chowdhury

... for the appellant.

Mr. Anirban Ray, Ld. G. P.,

Mr. Debasish Ghosh,

Mr. V. Kothari

.....

for the State

JUDGMENT

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

1. These intra-Court appeals at the instance of the writ petitioner is directed against the common order dated 22nd September, 2021 passed in W.P.A. No.11708 of 2021 and W.P.A. No.11710 of 2021. In the said writ petitions, the appellant had challenged the adjudication order passed by the respondent authority primarily on the ground of violation of principles of natural justice that the full text of the order was not communicated to the appellant and it is a non-speaking order. During the course of hearing of the writ petitions, copy of the speaking order dated 19th February, 2021 passed under Section 74 (9) of the West Bengal G.S.T. Act, 2017 (for short, "the Act") was served on the appellant. Since the appellant cannot file an online appeal before the first appellate authority, direction has been issued by the learned writ Court to the appellant to file the statutory appeal as a hard copy with a direction to the appellate authority to consider and dispose of the appeal. Not satisfied with such direction, the appellant has filed these appeals.

2. We have heard Mr. Nilotpall Chowdhury, learned Advocate for the appellant and Mr. Debasish Ghosh, learned standing counsel for the State.

3. On perusal of the order dated 19th February, 2021 passed under Section 74(9) of the Act, we find that the reply given by the appellant dated 3rd March, 2020 has been referred to by the authority. However, on perusal of the so-called reply, we find that it is bereft of any particular and all that the appellant pleads is his innocence and that he has not done any fraudulent activities or any illegal business and his business is legal and the refund granted was correct. This is not the manner in which the reply should be filed to a show-cause notice wherein the allegation made against the appellant is as follows:-

"(b) Ground: M/s. Richmond Industrial exported goods after pouring from M/s Neelam Products(GSTIN 19ACDQPA7741Q1ZT) & n M/s P.S. Commercial (GSTIN 19DAEPS947IN1ZN) and who were found non-existent. None of above three registered taxable persons turned up in response to repeated summons by Directorate of Revenue Intelligence, Govt. of India, Kolkata Zonal Unit. M/s. Richmond Industrial exported tobacco rejects fraudulently declaring highly inflated value to obtain higher amount of GST refund."

4. The learned Government counsel submitted that the appellant would be entitled to canvass all issues before the first

appellate authority and therefore, the learned single Bench was right in directing a statutory appeal to be filed.

5. It is no doubt true that an appeal is a continuation of original proceeding but nevertheless an opportunity before the original authority can never be equated to an opportunity before the first appellate authority. Therefore, we are of the view that the appellant can be granted one more opportunity to submit a proper reply and the adjudicating authority can decide the matter after affording an opportunity of personal hearing to the appellant, which appears to have not been extended before the order dated 19th February, 2021 was passed. However, for such reason, we are not inclined to set aside the order dated 19th February, 2021 but would direct the said order to be treated as an additional show-cause notice so that the appellant can file his reply and matter can be heard and decided on merits.

6. In the light of the above, the appeals are disposed of modifying the direction issued by the learned single Bench by directing the appellant to treat the order dated 19th February, 2021 as an additional show-cause notice and submit his objection within two weeks from the date of receipt of server copy of this judgment and order.

7. On receipt of the objection/reply, the appropriate authority namely the Deputy Commissioner of State Tax shall

afford an opportunity of personal hearing to the authorised representative of the appellant and pass fresh orders on merits and in accordance with law without being in an manner influenced by the conclusion arrived at in the order dated 19th February, 2021, which we have directed to be construed as an additional show-cause notice.

8. The said authority shall conclude the proceeding and pass a speaking order on merits and in accordance with law as expeditiously as possible but preferably within a period of six weeks from the date on which the personal hearing is concluded.

9. No order as to costs.

10. 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,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)