**Item no. 10**

# IN THE HIGH COURT AT CALCUTTA

**CIVIL APPELLATE JURISDICTION**

**APPELLATE SIDE**

Present:
**The Hon'ble Justice T.S. Sivagnanam**
**And**
**The Hon'ble Justice Supratim Bhattacharya**

MAT 1179 of 2022
with
IA No. CAN 1 of 2022

Yash Kedia Proprietor of M/s. Y And K Company
vs.
Assistant Commissioner of State Tax, Jorasanko & Jorabagan Charge

Appearance:

| | | |
|---|---|---|
| For the Appellant | : | Mr. Pratip Mukherjee<br>Mr. Rahaul Agarwal<br>Mr. Omar Faruk Gazi<br>Mr. Arpit Agarwal |
| For the Respondents (State) | : | Mr. A. Ray, ld. G.P.<br>Md. T. M. Siddiqui, ld. A.G.P.<br>Mr. D. Ghosh<br>Mr. S. Mukherjee<br>Mr. N. Chatterjee |
| For UOI | : | Mr. Sourabh Guhathakurta |
| Heard on | : | 16.09.2022 |
| Judgment on | : | 16.09.2022 |

**T.S. Sivagnanam J.:**

Heard at length learned counsel for the parties.

This intra court appeal is directed against the order passed by the learned Single Judge dated 22.07.2022 in WPA 15172 of 2022. The said writ petition was filed by the appellant praying for issuance of writ of certiorari to cancel the order dated 23.03.2022 passed under Section 74(9) of the WBGST Act, 2017/ CGST Act 2017. There were other consequential reliefs also sought for by the writ petitioner/appellant. The learned Single Judge was of the view that the order challenged in the writ petition is an appellable order and therefore declined to interfere with the order and affidavit-in-opposition was directed to be filed and also imposed a condition that if the appellant deposits 10% of the demand in question so that no coercive action will be taken against the appellant. Aggrieved by such order the appellant is before us.

On perusal of the impugned order passed in the writ petition dated 23.03.2022, we find that the authority has recorded that the Registered Tax Prayer (RTP), namely, the appellant has neither appeared nor filed any reply to the intimation given to the appellant.

Learned Counsel for the appellant submitted that the said conclusion is factually incorrect and has drawn our attention to the petitioner's letter dated 17.09.2021 addressed to the Deputy Commissioner, State Tax, ITC Investigation Unit, South Bengal wherein the appellant had in response to the memo dated 06.09.2021 has submitted that the bank account statement of Y & K Company for the financial year 2020-2021 and ledger of Avyaan Impex Private Limited for the financial year 2020-2021 authorized one of their representatives to appear before the authority to submit those documents. It is pointed out by the learned advocate for the appellant that the said letter has been acknowledged by the office of the State Commissioner, Bureau of Investigation, South Bengal Unit by fixing the date on 17th September,2021.

In our considered view, we need not to go into the controversy as to whether the documents were submitted and as to whether the authority concerned, namely, the Assistant Commissioner of Revenue, State Tax had received those documents as this Court is of the view that one more opportunity can be granted to the appellant to submit all the documents and the cancellation of registration was not justified. If these have been adopted, it will not only safeguard the interests of the appellant but also aid the revenue who were interested in recovery of appropriate taxes.

For the reasons given hereinabove, this Court is of the view that the writ petition as well as the appeal can be disposed of by a common order. The appeal stands **allowed in part** and the appeal alongwith the writ petition stands disposed of by directing the appellant to treat the order passed under Section 74(9) of the WBGST Act, 2017 read with CGST Act, 2017 dated 23.03.2022 as an additional show cause notice and the appellant is directed to submit reply alongwith all relevant documents within a period of two weeks from the date of receipt of the server copy of this order. On receipt of the same, the concerned authority shall afford an opportunity of personal hearing to the authorized representative of the respondent and pass a reasoned order on merits and in accordance with law as expeditiously as possible not later than a period of five weeks from the date on which the personal hearing is concluded.

It is made clear that this Court has not considered the merits of the matter and it will be open to the appellant to canvass all the issues both factual and legal grounds before the concerned authority. Since the writ petition itself has been disposed of the matter is remanded back for fresh consideration till final orders have been passed and no coercive action shall be initiated against the appellant.

Consequently, the connected application to the appeal stands disposed of.

No costs.

**(T. S. Sivagnanam, J.)**

**(Supratim Bhattacharya, J.)**

Raja Pal/Amitava Nag(AR. CT.)