Item No.7.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 01.09.2022

DELIVERED ON:01.09.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE PRASENJIT BISWAS

MAT 1250 of 2022
With
I.A. No.CAN 1 of 2022

Sarada Construction & Anr.
Vs.
The Assistant Commissioner, State GST, Central Section, Bureau of Investigation, Unit – 4, Siliguri Zone & ors.

Appearance:-

Mr. Himangshu Kr. Ray,
Mr. Vinay Kr. Shraff ..... for the appellants.

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

JUDGMENT

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

1. This intra Court appeal is directed against the order dated 29th July, 2022 in CAN 1 of 2022 in W.P.A. No.9398 of 2021. The appellants filed the writ petition challenging the order passed by the Senior Joint Commissioner, Sales Tax, Raiganj Circle, the appellate authority in an appeal filed by the assessee against an order of assessment dated 20th June, 2019. The appeal was dismissed by the appellate authority by order dated 7th December, 2020. Though the order is a five-page order, it is essentially an ex parte order as the appellate authority records that the appellants failed to respond to the notice nor they cited any reasonable explanation for non-appearance.

2. The learned Advocate appearing for the appellants would submit that notice was not received by the appellants and the notice, which was sent through e-mail was not known to the appellants and therefore, their non-appearance before the appellate authority that too on the first occasion was neither willful and wanton and the appellate authority could have granted one more opportunity.

3. The learned Single Bench was of the view that the writ petition should be heard and therefore, directed the respondents to file their affidavit-in-opposition. In other words, the learned Single Bench was convinced that the appellants had made

out a *prima facie* case. However, the prayer for stay was not granted and the stay application stood disposed of by the impugned order.

4. It appears that affidavit-in-opposition has been filed but the appellants are aggrieved because recovery notice had been issued and the respondents / department are threatening to block the credit ledger of the appellants. In our considered view, the writ petition itself can be disposed of along with this appeal as we are of the view that an appellate remedy is a very valuable remedy available under the Act to a dealer and by passing an *ex parte* order, the interest of revenue is not going to be protected as the matter is already under litigation and ultimately, the recovery process will also be delayed.

5. Furthermore, we note that at the time of filing of the appeal, the appellants had complied with pre-condition of depositing of 10% of the disputed tax. In the light of the above, we are of the view that the matter can be remanded back to the appellate authority subject to certain conditions.

6. Accordingly, the appeal as well as the writ petition stand disposed of by directing the appellants to deposit further 10% of the disputed tax before the assessing officer within fifteen days from the date of receipt of the server copy of the

judgement and order and upon such deposit and receipt being issued, the same shall be produced before the appellate authority, who shall verify the same and take up the appeal for consideration on merits and in accordance with law.

7. Subject to compliance of such condition, the order passed by the appellate authority dated 7th December, 2020 is set aside and the appeal stands restored to the file of the appellate authority to be decided on merits and in accordance with law uninfluenced by any of the observations made in the order dated 7th December, 2020.

8. The appellate authority shall issue notice of hearing of the appeal and afford a reasonable opportunity to the appellants / authorised representative and the appellants shall cooperate in the disposal of the appeal without seeking for any unnecessary adjournment.

9. The appeal shall be disposed of as expeditiously as possible but preferably within a period of six weeks from the date on which the personal hearing is concluded.

10. In the light of the above, the appeal as well as the writ petition stand disposed of with the above direction.

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,

(PRASENJIT BISWAS, J.)

NAREN / PALLAB (AR.C)