Item No.9.

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 1315 of 2022
With
I.A. No.CAN 1 of 2022

Emgee Enterprise & Anr.
Vs.
Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal) & ors.

Appearance:-

Mr. Anil Kumar Dugar,
Mr. Rajarshi Chatterjee ..... for the appellants.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. D. Sahu .... for the respondents.

<u>JUDGMENT</u>

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

1. This intra Court appeal is directed against the order dated 18th July, 2022 in W.P.A. No.13041 of 2022 filed by the appellants/writ petitioners. The writ petition was filed challenging the order passed by the Joint Commissioner of Revenue, Kolkata South Circle, who is the appellate authority under the provisions of the West Bengal Goods and Services Tax Act, 2017. The appellants had filed the said appeal before the appellate authority challenging the order of the Assistant Commissioner of State Tax, Bureau of Investigation (South Bengal) Headquarters dated 22nd December, 2021. The appellate authority has rejected the appeal. Since there is no tribunal functioning as on date, the appellants having left with no other remedy, had filed the writ petition challenging the order passed by the appellate authority.

2. The issue pertains to removal of 40 cases of deodorant, which the appellants had purchased from Mumbai which, according to the appellants, stored in the transporter's godown, viz., M/s. Shivan Rail Logistic. The case of the appellants is that they had purchased 300 cases of deodorant from Mumbai of which 260 cases were removed from the godown of the transporter and 40 cases were remaining in the godown of the transporter as the appellants did not have the sufficient space to store them in

their godown. At that juncture, the Bureau of Investigation had intervened, which ultimately has resulted in an order dated 22nd December, 2021 passed by the Assistant Commissioner of State Tax, South Bengal. On perusal of the order, we find that the authority had levied tax and penalty solely on the ground that the appellants were not able to produce any document in respect of the seized goods. Before the appellate authority, the appellants had submitted certain documents and sought to establish their case. The appellate authority has essentially rejected the appeal on three grounds. Firstly, the E-way bill has lost its validity. Secondly, the transporter's godown was not notified / declared as an additional place of business of the appellants. Thirdly, the quantity of the imported goods as could be seen from the documents produced by the appellants did not match with the total quantity.

3. The appellants' case is that if the distance between the transporter's godown and the appellants' godown is less than 50 kilometers in terms of Rule 138 (5) of the W.B.G.S.T, Rules, 2017, this embargo of the e-way will having been expired, cannot be put against the appellants. On the second ground, it is submitted that the transporter's godown cannot be notified as an additional place of business of the appellants as it is a

cumbersome procedure and seldom the transporters will agree for such a course of action.

4. With regard to the discrepancy in the quantity, the appellants' case is that if the records are produced, it will clearly show that there is no discrepancy and in this regard the transporter can also be put on notice to disclose as to the total quantity, which was received in their godown, the quantity cleared and the quantity which is remaining.

5. In our considered view, all these issues are complicated factual issues, which are being disputed by the revenue. In any event, this cannot be adjudicated in a writ petition. Thus, considering the peculiar facts and circumstances of the case, we are of the view that one more opportunity can be granted to the appellants to go before the appellate authority to substantiate and establish that three grounds, which have been held against them are not made out. However, such opportunity shall be subject to stringent conditions.

6. In the light of the above observations, we are of the view that the writ petition itself could be disposed of along with this appeal. In the light of the above, the appeal and the writ petition are disposed of by directing the appellants to pay the entire disputed amount of tax, which has been quantified at

Rs.62,208/- less 10% of the tax in dispute, which has already been paid within three weeks from the date of receipt of the server copy of this judgment and order.

7. If the appellants comply with such condition, the respondent authorities are directed to release the goods within three days from the date of such payment after which the appellate authority shall take up the appeal petition for *de novo* consideration after affording an opportunity of personal hearing to the appellants or their authorised representative, peruse the documents that they may produce, issue notice to the transporter to appear in person and disclose all documents in their possession and thereafter pass fresh orders on merits and in accordance with law without being in any manner influenced by the observations and findings recorded by the appellate authority in the order dated 30th May, 2022.

8. The appellants are directed to cooperate in the expeditious disposal of the appeal petition, which has been directed to be considered by way of *de novo* adjudication.

9. Accordingly, the appeal and the writ petition stand disposed of.

10. There shall be no order as to costs.

11. 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)