Form No. J(2).
Item No.5

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 29.11.2022

DELIVERED ON: 29.11.2022

CORAM:
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 1334 of 2022
With
I.A. No. CAN 1 of 2022

M/s. Global Seamless Tubes & Pipes Private Limited
VERSUS
Assistant Commissioner of CGST & CX,
Shyambazar Division, Kolkata North Commissionerate & Ors.

Appearance:-
Mr. Anil Duggar
Mr. Sandip Choraria ....for the appellant

Mr. Bhaskar Prosad Banerjee
Mr. Abhradip Maity .....for the respondents

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 29th June, 2022 passed in WPA

8746 of 2022.The said writ petition was filed by the appellant praying for a direction upon the respondents to complete the investigation, which has been caused against the appellant. The appellant is primarily aggrieved by terming the appellant as a risky exporter and a tag being fixed and accordingly, thereby export consignments of the appellant are either not being allowed to be exported or there is inordinate delay on the alleged ground of verification.

2. The learned writ Court had directed the investigation to be completed and appropriate orders to be passed pursuant to such investigation. Aggrieved by such direction, the writ petitioner is on appeal before us.

3. We have heard Mr. Duggar, learned advocate for the appellant/petitioner. The prayer sought for in the writ petition is for a direction upon the respondents to complete the investigation. In terms of the oral instruction received by Mr. Bhaskar Prosad Banerjee, learned senior standing counsel for the revenue, the investigation appears to have been complete and it is in the final stage and the show-cause notice is to be issued shortly.

4. Mr. Duggar, on the other hand would submit that already four notices have been issued calling upon the appellant to produce the documents, which the appellant had complied with. Further, it is the submission of the learned advocate for the

appellant that the alleged amount of illegal availment of ITC has been paid by the appellant without prejudice to its rights and nothing remains further for the department to brand the appellant as a risky exporter.

5. What is to be borne in mind is that terming the appellant as a risky exporter and issuing a show-cause notice by the adjudicating authority are two different matters. Pending investigation, the department exercised its powers in terms of the various circulars and directions issued by the Central Board to affix the tag on the exporter as a risky exporter to enable the department to verify the export consignments etc. Therefore, the risky exporter tag cannot be indefinitely put on valid and precisely for this reason, the Central Board has issued Circular No. 131/1/2020-GST dated 23rd January, 2020 by which strict timelines have been fixed for the authorities to take action. The circular affords an opportunity to such a risky exporter to escalate the matter. If the concerned officer does not take a decision within 14 days, a petition before the Principal Chief Commissioner or Chief Commissioner of Central Tax shall be filed and if such petition is filed, a decision should be taken within 7 working days.

6. All these timelines have been totally ignored and are not being adhered to by the department. The representation given by the appellant to the sixth respondent is dated 10th March,

2022 and going by the timelines prescribed in the circular, a decision ought to have been taken within 7 days. This has not been adhered to by the department.

7. As pointed out earlier, the process of adjudication is quite distinct and different from terming a person a risky exporter, which tag cannot be perpetually affixed to an exporter as it would tantamount to interfering with his right to carry on exports based on suspicion. Therefore, we are of the view that the representation dated 10th March, 2022 should be considered by the sixth respondent within the timeline stipulated by this Court.

8. In the result, the appeal stands disposed of with a direction to the sixth respondent to consider the representation dated 10th March, 2022 after giving an opportunity of personal hearing to the authorised representative of the appellant and an order be passed on merits and in accordance with law and communicate the same to the appellant within 15 days from the date of receipt of a copy of this judgment and order. Connected application (I.A. No. CAN 1 of 2022) also stands disposed of.

9. So far as the adjudication proceedings are concerned, it would be well open for the first and second respondent to proceed to issue show-cause notice and proceed in accordance with law.

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,

(HIRANMAY BHATTACHARYYA, J.)

RAJA/Pallab, AR(Ct.)