Item no. 14

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 1352 of 2022
with
IA No. CAN 1 of 2022

Sujoy Burdhan
vs.
Assistant Commissioner, State Tax, Bureau of Investigation (South Bengal), Barrackpore Zone (W.B.) & ors.

Appearance:

For the Appellants	:	Mr. Siddhartha Sankar Sengupta Mr. Sumit Ghosh Mr. Souradeep Majumder
For the State	:	Mr. A. Ray, ld. G.P. Md. T. M. Siddiqui, ld. A.G.P. Mr. D. Ghosh Mr. D. Sahu
Heard on	:	08.09.2022
Judgment on	:	08.09.2022

T.S. Sivagnanam J.:

This intra court appeal filed by the writ petitioner is directed against the order passed on 11.08.2022 in WPA 17726/2022. The writ petition was filed challenging the order passed by the Joint Commissioner of SGST rejecting the appeal only on the ground that the certified copy of the assessment order has not been filed. The appellant's case is that they have not been furnished the certified copy and they have obtained the certified copy of certain other documents but not the summary of the order.

In any event, we need not to go into the said controversy as what was communicated to the appellant was only the summary of the order dated 01.10.2021 and no speaking order under Section 79(4) of the WBGST Act has been communicated to the appellant. Therefore, in order to have an effective opportunity to file an appeal, the appellant should be made known of the reasons on which the original authority had passed the order. Therefore, we are of the view that appropriate directions in this regard can be issued.

Learned counsel for the appellant submitted that the appellant had not retained the original certified copy of the order and the finding rendered by the learned Single Judge is factually incorrect. That apart, it is pointed out that certain observations have been made against the learned advocate of the appellant and cost has also been imposed. As already pointed out by the appellant, the appellant has been informed about the summary of the order dated 01.10.2021 and no speaking order has been served on the appellant. This factual position has not been disputed by the respondent.

In such circumstances, there is no reason for making any observation neither against the petitioner's conduct nor against the lawyer who had been engaged by the appellant. In fact, the observations made against the lawyer are not sustainable since the said lawyer was not a party to the proceedings nor the same was the "lis" before the learned writ court. Therefore, such observations need to be eschewed. If both the observations are eschewed, then there is no case made out for imposing the cost.

In the light of the above, the appeal stands **allowed**. Consequently, the connected application also stands disposed of. The order passed in the writ petition is set aside and the writ petition is disposed of by directing the Assistant Commissioner, State Tax, Bureau of Investigation (South Bengal), Barrackpore to communicate the speaking order dated 01.10.2021 within a period of two weeks from the date of receipt of the server copy of this order. On receipt of the same, the appellant is granted three weeks time to file statutory appeal before the appellate authority which shall be entertained in accordance with law and after affording an opportunity of personal hearing, the appellate authority shall pass a reasoned order on merits and in accordance with law. The appellant is required to comply with the pre-deposit condition as provided under the statute.

In the light of the reasons given hereinabove, the observations made by the learned Single Judge against the writ petitioner, against the lawyer and imposition of cost, all stand set aside.

Since the appellant cannot file on-line appeal petition, the appellant is permitted to file the appeal petition as a hard copy which shall be taken on file of the appellate authority.

No costs.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)

Raja Pal/Amitava (AR. CT.)