Form No. J(2).
Item No.6

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. 1356 of 2022
With
I.A. No. CAN 2 of 2022

Commissioner, Central CGST and CX
Haldia Commissionerate & Ors.
VERSUS
Haldia Petrochemicals Limited & Ors.

Appearance:
Mr. Vipul Kundalia
Mr. Bhaskar Prosad Banerjee
Mr. K.K. Maiti
Mr. Tapan Bhanja ....**for the appellants**

Mr. J.P. Khaitan, Sr. Adv.
Mr. Agnibesh Sengupta
Mr. Hiranyak Gangopadhyay
.....**for the respondent/writ petitioner**

JUDGMENT

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

1. This intra-Court appeal at the instance of the revenue is directed against the judgment and order dated 30th June, 2022

passed in W.P.A. 4249 of 2022. The appeal has been filed by the respondents in the writ petition viz., Commissionerate, Central CGST and CX, Haldia Commissionerate. The respondent no. 1 had filed a writ petition praying for a direction to cancel the letter dated 17th February, 2022 and the letter dated 18th June, 2014; for issuance of a writ of mandamus to direct the appellants to provide copy of the order in original dated 17th October, 2012 and for other allied reliefs.

2. The case of the respondent/writ petitioner before the learned writ Court was that the order of adjudication dated 17th October, 2012 was not served on the respondent and consequently, attachment of the bank account and recovery notices, which were alleged to have been issued in the year 2014 is bad and the threat meted out to the respondent vide letter dated 17th February, 2022 is also not sustainable.

3. In the said writ petition, the appellants/department had filed affidavit-in-opposition along with the copy of the order in original dated 17th October, 2012, based on which the respondents have preferred appeal before the learned tribunal after effecting the mandatory pre-deposit.

4. The learned writ Court has quashed the order of attachment of the bank accounts of the respondents and had also directed refund of the sums of money, which were recovered by such bank attachment.

5. The learned senior advocate appearing for the respondent/writ petitioner submitted that as against the amount refundable to the respondent, an adjustment has been made and that order has been put to challenge by the respondent by way of a statutory appeal before the first appellate authority.

6. It is not in dispute that the revenue has refunded the amounts, which were recovered from the respondents by way of bank attachment but the amount of approximately Rs. 4.75 crores is still lying in the hands of the department. On going through the facts of the instant case, we find that the order and direction issued by the learned writ Court is fully justified. We support such conclusion with the following reasons.

7. Section 37C of the Central Excise Act, 1944 (for short 'the Act') deals with service of decisions, orders, summons etc. Clause (a) of sub-section (1) of section 37C would be relevant for the case on hand. It states that any decision or order passed or any summons or notice issued under the Act or the rules made thereunder shall be served by tendering the decision, order or summons or notice, sending it by speed post with acknowledgement due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Board of Revenue

Act, 1963 to the person for whom it is intended or his authorised agent, if any. Clause (a) of section 37C(1) underwent an amendment and the words "or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs" was inserted with effect from 10th May, 2013. Thus, the statutory provision contemplates four methods of service of the decision, the first of which is tendering the decision on the assessee, secondly by sending it by registered post with acknowledgment due, thirdly by speed post with proof of delivery and fourthly by the approved courier.

8. Sub-section (2) of section 37C of the Act would also be relevant, which states that every decision under the Act or the rules shall be deemed to have been served on the date on which the decision is tendered or delivered by post or courier referred to in sub-section (1) of section 37C. Therefore, proof of delivery is a mandatory condition to establish proper service of the decision.

9. The case of the appellants is that the adjudication order was despatched through speed post. However, there was no record placed before the learned writ Court to show that the order was delivered or in other words, there was no proof of delivery. Therefore, in our view, the direction issued by the learned writ Court cannot be faulted.

10. That apart, the interest of the revenue has been sufficiently safeguarded since a sum of Rs. 4.75 crores is still lying with the department apart from that the respondents have also made the mandatory pre-deposit while preferring the appeal before the learned tribunal. Therefore, the order passed by the learned writ Court not only has granted relief to the respondent/writ petitioner but also safeguarded the interest of revenue and we find no good reason to interfere with such an order.

11. Accordingly, the appeal fails and is dismissed. The amount lying with the department shall continue to remain with the department and shall abide by the orders to be passed by the learned tribunal.

12. There shall be no order as to costs.

13. 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.)