Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 08.03.2022.

DELIVERED ON:08.03.2022

CORAM:

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

MAT 1328 OF 2021
WITH
I.A. NO.CAN 1 OF 2021

State Tax Officer, Bureau of Investigation (North Bengal)
VERSUS
Surinder Kumar Kotnala & Ors.

Appearance:-
Mr. Anirban Ray, Ld. G. P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh

......for the appellant

Ms. Rita Mukherjee,
Mr. Abhijat Das,
Mr. G. Jha,
Mr. Rowsan Kumar Jha **.. for the respondent nos.1 & 2.**

JUDGMENT

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

1. This intra Court appeal is directed against the interim order dated 25th November, 2021 in W.P.A. No.16096 of 2021 filed by the respondent nos.1 and 2 herein. The respondent nos.1 and 2 had challenged an order passed by the Appellate Authority under the provisions of the CGST Act, 2017 dated 15th September, 2021 confirming the order of the adjudicating authority dated 6th May, 2021 in levying tax of Rs.26,45,299/- and penalty of Rs.37,84,829 on the alleged ground that the goods were attempted to be offloaded in the State of West Bengal, though the goods were consigned to the State of Assam. The goods have been detained along with the vehicle since March, 2021 since the appellant could not avail the alternative remedy provided under Section 112 of the Act before the Appellate Tribunal as there is no forum as on date the writ petition was filed challenging the order of the Appellate Authority.

2. The respondent nos.1 and 2 prayed before the learned Single Bench for release of the goods as well as vehicle as the goods, which is said to be pan masala is unfit for consumption on account of the fact that the goods were detained ever since

March, 2021 and the vehicle also has deteriorated on account of exposure to the fury of weather.

3. The learned Single Bench on taking note of the fact that there is no forum available for the respondent nos.1 and 2 to challenge the order passed by the Appellate Authority, entertained the writ petition and imposed a condition on the respondent nos.1 and 2 for release of the vehicle and the goods. The learned Single Bench had directed 20% of the disputed tax amount to be paid by the respondent nos.1 and 2 so as to be entitled to release of the goods and the vehicle taking note of the fact that at time of filing of the appeal before the Appellate Authority, the first respondent, the consignee in the State of Assam, who claims ownership of the goods had deposited 10% of the disputed tax.

4. The revenue is aggrieved by such order on the ground that if the vehicle and the goods are released, the interest of the revenue will not be protected and such an order could not have been passed, more particularly in the light of the condition stipulated in Section 112(8)(a).

5. We have heard Mr. Debasish Ghosh, learned counsel appearing for the appellant and Ms. Rita Mukherjee, learned counsel appearing for the respondent nos.1 and 2.

6. It is not disputed by the revenue that as on date there is no Appellate Tribunal available for the respondent nos.1 and 2 to challenge the order passed by the Appellate Authority dated 15th September, 2021. Therefore, the writ petition was rightly entertained by the learned Single Bench. With regard to the direction issued by the writ Court for release of the goods and the vehicle, it is an order in exercise of discretion by the learned writ Court. Unless and until the exercise of discretion is absolutely unreasonable and arbitrary, as an Appellate Court, seldom such directions are interfered with. In the instant case, the first respondent does not admit any tax liability as their case is that the goods were consigned from the State of Uttar Pradesh to be delivered in the State of Assam and the consignee is the first respondent herein and the second respondent is the transporter.

7. The further case of the respondents / writ petitioners is that the driver of the vehicle, who also hails from the State of Uttar Pradesh had mistakenly taken a different route and travelled about 21 kilometers into the State of West Bengal and there was no intention on the part of the respondent nos.1 and 2 to deliver the goods within the State of West Bengal.

8. It is the further case of the first respondent that he is the consignee and the owner of the goods has shown his bona fide by appearing before the tax authorities and claiming ownership of the goods and praying for release of the goods and the vehicle to be taken to the State of Assam. By efflux of time, the goods are no longer safe for consumption and the vehicle has also undergone deterioration on account of the same being detained for nearly a year.

9. As long as the respondent nos.1 and 2 do not admit any of the tax liability or interest or fine or penalty, the question of invoking Clause (a) of Section 112 (8) would not arise. If that is the fact situation, then it has to be seen as to whether Clause (b) of Section 112(8) has been complied with. In fact,

the learned writ Court bearing the same in mind had directed payment of additional 20% of the disputed tax, which the first respondent has already deposited.

10. Thus, we find that the exercise of discretion is neither improper or irrational for us to interfere. The interest of revenue stands sufficiently safeguarded as 30% of the disputed tax has been collected by the department. This Court expressed a concern that the product being pan masala and vehicle along with the goods having been detained for almost a year, the same would be unfit for consumption. This factual position is admitted by the first respondent.

11. The Court also expressed a concern that the first respondent, the consignee / owner of the goods, if is allowed to take the goods to the State of Assam, there may be a likelihood that the goods may be sold in the open market, which would be harmful. Taking note of the concern expressed by the Court, the learned counsel appearing for the respondent nos.1 and 2, on instruction, submitted that the first respondent may be permitted to send back the goods to the consignor in the State

of Uttar Pradesh. If such permission is granted, it would ensure that the goods are not sold in the State of Assam and at the same time, would go back to the consignor in the State of Uttar Pradesh.

12. So far as the merits of the matter is concerned, it will be well open to the parties to agitate the same before the learned Single Bench, before which the appellant has to file affidavit-in-opposition, which has not been filed till date.

13. In order to safeguard the interest of revenue as well as to ensure that the respondent nos.1 and 2 cooperate in the proceedings, we are of the view that the balance amount of the disputed tax should be secured by the respondent nos.1 and 2 by executing a bond in the form as approved by the appellant.

14. Further the second respondent, the transporter, shall also undertake to produce the vehicle before the appellant authorities as and when required and to such an effect an undertaking shall also be executed in favour of the appellant authorities.

15. In the result, we find no grounds to interfere with the order passed by the learned Single Bench exercising discretion, imposing conditions for the purpose of release of the impugned goods and the vehicle.

16. Accordingly, the appeal and the connected application stand disposed of by directing the respondent nos.1 and 2 to execute a bond in the form as approved by the appellant authorities securing the interest of the revenue and also a letter of undertaking to produce the vehicle-in-question as and when required. Needless to state that the respondent nos.1 and 2 shall cooperate in the proceedings that may be initiated by the appellant department. The vehicle along with the goods shall be released within three days from the date on which the above conditions are complied with along with the specific condition that the goods shall be sent back to the State of Uttar Pradesh to the consignor.

17. Since the respondent nos.1 and 2 have already deposited the 20% of the disputed tax, upon execution of the bond and the

undertaking as mentioned above, the goods shall be released within three days therefrom.

18. We make it clear that this order and direction is issued considering the peculiar facts and circumstances of the case and the same shall not be treated as a precedent, taking note of the fact that the owner of the goods, namely, the first respondent has unequivocally agreed to send back the goods to the consignor in the State of Uttar Pradesh.

19. 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)

NAREN/PALLAB(AR.C)