Item no. 08

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 1426 of 2022

with

IA No. CAN 1 of 2022

Md. Yusuf

vs.

State Tax Officer, Bureau of Investigation, (South Bengal), Kharagpur Zone & Ors.

Appearance:

For the Appellant	:	Mr. Vinay Shraff Ms. Priya Sarah Paul
For the respondent	:	Md. T. M. Siddiqui, ld. A.G.P. Mr. D. Ghosh Mr. V. Kothari
Heard on	:	28.09.2022
Judgment on	:	28.09.2022

T.S. Sivagnanam J.:

This intra-Court appeal is directed against the order dated 30.08.2022 passed in WPA 18885 of 2022. In the said writ petition the appellant had challenged the detention order dated 10th August, 2022 passed under Section 129(1) of CGST Act and WBGST Act. The learned Single Bench after taking note of the written instruction given to the learned Government Counsel by the Assistant Commissioner of Revenue, Bureau of Investigation, held that the order of detention is an appellable order and the appellant can approach the appellate authority. Challenging the said order the appellant is before us. On perusal of the order of detention dated 10th August, 2022 we find that there is more than one allegation. The first of such allegations is that there is mismatch between the goods in movement and documents tendered. The second allegation is that the appellant had obtained registration under the WBGST Act by means of fraudulent documentation. Further it is alleged that the tax invoices generated in support of movement of the goods are fabricated and has no legal basis. Further, the teak sawn timber was transported without valid documents in a concealed manner in contravention of Section 68 of CGST Act 2017 and WBGST Act 2017 read with Section 138A thereof. Therefore the authority came to a prima facie conclusion that the movement of goods is considered as movement without valid documents and the goods and the conveyance used for the movement of goods needs to be detained under Section 129 of GGST/SGST Act, 2017.

Mr. Shraff, learned advocate appearing for the appellant contended that the appellant is the owner of the goods and had a transit permit issued by the Forest Department along with invoices and e-way bill. Thus, it is incorrect to state that the goods were not transported validly. Further allegation that registration under the Act was being obtained by fraudulent document is incorrect allegation and the appellant has got sufficient material to show that registration was obtained by placing valid documents. However the authority erroneously held that registration was obtained by fraudulent documentation.

Admittedly confiscation proceedings are yet to commence and the goods have been detained and seized.

Mr. Ghosh, learned Government Counsel would submit that till date the department does not know who is the owner of the goods and, therefore, an ID was created in the name of the driver and all orders were uploaded in his name, namely, Mani N. As could be seen that goods have not yet been confiscated till date, therefore, the first remedy available to the appellant is to approach the authority who passed the detention order and seek to revoke order and of detention by answering all the allegations which have been found and recorded in the detention order dated 10th August, 2022. The appellant would be free to produce all documents in respect of their contentions and also establish that he is the rightful owner of the goods and goods were transported with valid documents and the registration was obtained by producing valid documents. If there is any discrepancy in the nature of goods the State Tax Authority is directed to obtain opinion from the Forest Department by requesting one of their officers to inspect the goods in the place where it has been detained. On such application being filed the concerned authority shall afford an opportunity of personal hearing to the appellant or his authorized representative and to pass a reasoned order on merits and in accordance with law.

Since the goods being natural produce, it is exposed to the fury of weather, there is likelihood of deterioration. Therefore the authority pending compliance of the above directions shall permit the appellant to provide requisite number of tarpolene for securing the goods so that the goods are not exposed to sun and rain. The appellant is directed to file the said application within a period of one week from the date of receipt of the server copy of this order after which the authority is granted 10 working days time to afford a personal hearing to the appellant and pass a speaking order on merits and in accordance with law.

We make it clear that we not gone into the merits of the matter which shall be considered and disposed of by the authority concerned.

Hence, the instant appeal stands **disposed of**. Consequently, the connected application stands **disposed of**. No costs.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)

Raja Pal/Amitava (AR. CT.)