

22.03.2022
3
ns/pg Ct.16

MAT 1389 of 2021
With
I.A. No.CAN 1 of 2021

M/s. Kassa Industries.
Vs.
Union of India & Ors.

Mr. Sandip Choraria,
Mr. Rajarshi Chatterjee,
Mr. Himangshu Kr. Ray .. for the appellant.

Mr. Bhaskar Prasad Banerjee,
Ms. Manasi Mukherjee .. for the CGST.

Mr. Sovan Mukherjee ... for the Union of India.

This intra Court appeal is directed against the order in W.P.A. 5217 of 2021. The said writ petition was filed by the appellant questioning the correctness of the order of rejection passed under Sabka Viswas (Legacy Dispute Resolution) Scheme, 2019 as communicated to the appellant through e-mail on 2nd January, 2020. The learned writ Court by the impugned order dated 18th November, 2021 dismissed the appeal on two grounds. Firstly, on the ground that the dispute resolution scheme is no longer in vogue and secondly, there is an inordinate delay in filing the writ petition and the explanation offered is not satisfactory. Challenging the correctness of the order passed in the writ petition, the appellant is before us.

It may be true that the dispute resolution scheme is no longer in vogue and reason for rejection appears to be that the appellant has not produced copy of the order withdrawing the appeal, which was pending before the Commissioner of Appeal, Siliguri CGST and CX. It is seen that appellant had made a request to the Commissioner of Appeal for withdrawal of the appeal filed by it so as to enable it to pursue the application under the dispute resolution scheme. However, the appeal was permitted to be withdrawn only on 5th March, 2020 and by then, the application under the scheme has been rejected.

Considering the peculiar facts and circumstances of the case, we are of the view that if the settlement application has been rejected, then it goes without saying that the appellant should be permitted to pursue its appeal, which it had filed before the Commissioner of Appeal and the appeal should be heard and decided on merits and in accordance with law. If the appeal is not restored to the file of the Commissioner of Appeal, then it would amount to double jeopardy as the appellant cannot be vexed twice.

For the above reasons, we allow this appeal and set aside the order in the writ petition and consequently we direct the Commissioner of Appeal to restore the appeal in file no.V(Ch-68)XAP-92/Slg-Appeal/19-20/6557 to the file of the fourth respondent with a direction to the

fourth respondent to consider and decide the appeal on merits and in accordance with law after affording an opportunity of personal hearing to the appellant.

With the above directions, the appeal along with connected application are disposed of.

No costs.

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.)

(Hiranmay Bhattacharyya, J.)