Item No.6.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 21.09.2022

DELIVERED ON:21.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. No.1478 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

KDG Projects Private Limited & Anr.
Vs.
The Assistant Commissioner of State Tax, Bureau of Investigation (North Bengal), Raiganj Zone & Ors.

Appearance:-
Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah ..... for the appellants.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. D. Sahu ... for the State.

JUDGMENT

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

Re: I.A. CAN 2 of 2022

1. This application has been filed to condone the delay of 16 days in filing the instant appeal.

2. We have heard Mr. Ankit Kanodia, learned counsel appearing for the appellants and Mr. Debasish Ghosh, learned Advocate for the State.

3. We are satisfied with the reasons assigned in the affidavit filed in support of the application. Accordingly, the delay in filing the instant appeal is condoned.

4. The application being I.A. CAN 2 of 2022 is allowed.

Re: M.A.T. No.1478 of 2022

5. This intra Court appeal is directed against the order dated 25th July, 2022 in W.P.A. No.16044 of 2022 by which the learned Single Bench has declined to pass any interim order and directed affidavit-in-opposition be filed by the respondents. Being aggrieved by such direction and in not granting any interim protection, the appellants are before us by way of this appeal.

6. We have heard Mr. Ankit Kanodia, learned counsel appearing for the appellants duly assisted by Ms. Megha Agarwal, learned Advocate and Mr. Debashish Ghosh, learned Advocate for the State.

7. The appellants had filed the writ petition challenging the order passed by the appellate authority, namely, Senior Joint Commissioner, West Bengal State Tax, Kolkata in an appeal filed under Section 107(1) of the West Bengal Goods and Services Tax Act, 2017 (for short, "the Act") dated 30th November, 2021. The said appeal was filed against an order passed by the Assistant Commissioner of State Tax, West Bengal directing the appellants to pay 100% tax and 100% penalty on the goods, which have been transported, on the ground that the e-way bill had expired and 48 hours had lapsed. Before the appellate authority, the appellants contended that it was an unintentional mistake and due to oversight, the accounts team of the appellants had not extended the e-way bill. Further, it was pointed out that they had no intention to evade payment of tax and this would be evident from the fact that they have raised the invoice along with the e-way bill. Further, they have made the payment of

full tax on the said invoice. Therefore, it was contended that there was no mens rea on the part of the appellants or any attempt to evade payment of tax. The learned appellate authority by the order impugned in the writ petition has dismissed the appeal solely on the ground that the e-way bill was valid up to 22nd January, 2021 and the vehicle, which was transporting the goods was intercepted on 25th January, 2021 and by then, the e-way bill had expired. In any event, it is an admitted position that the entire tax has been remitted by the appellants. If the order passed by the Assistant Commissioner of State Tax, West Bengal is to stand confirmed, then it tantamounts to recovery of 200% tax and 100% penalty and the respondents /State would not be justified in recovering taxes twice on the same transaction. Therefore, in our considered view that the learned appellate authority has to take into consideration as to whether there was any mala fide intention on the part of the appellants in not extending the e-way bill and transporting the goods after the expiry of the e-way bill.

8. The learned Advocate appearing for the appellants would submit that the transporter had halted the vehicle on 22nd January, 2021 and on 23rd January, 2021 was declared as a local

holiday and next day, i.e., 24th January, 2021 was a Sunday and the vehicle commenced its movement on 25th January, 2021, when it was intercepted. The learned Advocate would further submit that the transporter will also file an affidavit in this regard so that the bona fides are established.

9. In the light of the above, we are of the considered view that the learned appellate authority should consider the question as to whether there was any intentional attempt made by the appellants to evade payment of tax. Since this aspect has not been considered by the learned appellate authority, we are constrained to remand the matter to the appellate authority for fresh consideration.

10. Accordingly, the appeal as well as the writ petition are disposed of and consequently, the order passed by the learned appellate authority dated 30th November, 2021 is set aside and the appeal stands restored to the file of the appellate authority to be decided on merits and in accordance with law. The appellants are directed to obtain an affidavit from the transporter setting out the facts and if necessary the appellate authority can also call for details from the transporter and

after hearing the appellants, a fresh decision be taken on merits and in accordance with law.

11. This direction shall be complied with within a period of 8 weeks from the date of receipt of the server copy of this judgment and order.

12. With the above directions, the appeal and the connected application being CAN 1 of 2022 are disposed of.

13. No order as to costs.

14. 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,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)