Item No.7.

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.1479 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

K. D. Gupta & Company & Anr.

Vs.

The Assistant Commissioner of State Tax, Barrackpore Range & Ors.

Appearance:-

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

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee,
Mr. V. Kothari ... 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.1479 of 2022

5. This intra Court appeal is directed against the order dated 25th July, 2022 in W.P.A. No.16047 of 2022 by which the learned Single Bench has declined to pass any interim order and directed affidavit-in-opposition to be filed by the respondents. Being aggrieved by such direction, the appellants are before us by way of filing this appeal. With the consent of either side, the writ petition itself is taken up for disposal along with this appeal.

6. As against an order passed by the Assistant Commissioner of State Tax, West Bengal, the appellants had filed an appeal before the first appellate authority under Section 107(1) of the West Bengal Goods and Services Tax Act, 2017 (for short, "the Act").

7. The allegation against the appellants was that the goods which were meant for export were intercepted on 15th September, 2019 at about 8.35 a.m. and it was found the goods were not accompanied by the valid e-way bill. The appellants' case is that at 10.47 a.m., the e-way bill was generated and it was made known to the detaining authority. Notwithstanding that, the said authority seized the goods and thereafter issued show cause notice and ultimately the order was passed imposing tax and

penalty against which the appeal was filed before the first appellate authority, which was rejected.

8. The case of the appellants is two-folds; firstly, the transaction being an export transaction, no tax is payable and secondly, there was no wilful intention on the part of the appellants not to generate any e-way bill but they would contend that it is actually the fault of the driver of the vehicle, who was uneducated and did not know about the legal position. Be that as it may, if the transaction is an export transaction, then no tax is leviable. Consequently, the conduct of the appellants could have been examined both by the adjudicating authority as well as by the appellate authority while imposing penalty under Section 129 of the Act.

9. On perusal of the order passed by the first appellate authority, we find that such exercise has not been done. Therefore, we are of the view that one more opportunity can be granted to the appellants to show their bona fides.

10. For the above reasons, this appeal as well as the writ petition are disposed of and the order passed by the appellate

authority dated 30th November, 2021 is set aside and the matter stands remanded to the appellate authority. The appeal shall stand restored in the file of the appellate authority and the appellants shall appear before the appellate authority and produce all documents to establish their case that no tax is leviable and there was no willful intention on their part to evade payment of tax so as to attract penalty, after affording an opportunity of personal hearing.

11. The appellate authority shall consider both aspects and pass a reasoned order on merits and in accordance with law as expeditiously as possible but preferably within a period of 12 weeks from the date of receipt of the server copy of this judgment and order.

12. We make it clear that we have not gone into the merits of the matter and all issues can be considered by the first appellate authority.

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

14. No order as to costs.

15. 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)