

Item No.12.

**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.1488 of 2022
With
I.A. No.CAN 1 of 2022**

**Shri Mahabir Prasad Kedia.
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Arijit Chakraborty,
Mr. Lalit Baid,
Mr. Prabir Bera,
Ms. Saberi Saha**

..... for the appellant.

**Mr. Soumitra Mukherjee,
Mr. Debasish Ghosh,
Mr. D. Sahu**

... for the State.

**Mr. Goutam Dey,
Ms. Ankita Ghosh**

... for the Union of India.

JUDGMENT

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

1. This intra Court appeal is directed against the order dated 25th August, 2022 in W.P.A. No.18600 of 2022. By the impugned order, the learned Single Bench dismissed the writ petition, which was filed challenging the correctness of the order passed by the appellate authority, namely, Senior Joint Commissioner, State Tax, Howrah Circle dated 7th July, 2022. The writ petition came to be dismissed on the sole ground that the order is well reasoned order and there is no violation of principles of natural justice. As against the order passed by the first appellate authority, the statute provides for a further remedy before the Tribunal, which is yet to be constituted. Therefore, the appellant having left with no other efficacious alternative remedy has to necessarily approach the learned Writ Court under Article 226 of the Constitution of India.

2. It is settled legal principle that none should be left remediless. In any event, the correctness of the order passed by the appellate authority will come up for judicial scrutiny on

the first occasion before the learned writ Court. Therefore, in our considered view, the writ petition should be entertained and affidavit-in-opposition should be directed to be filed by the respondents and thereafter the writ petition should be disposed of on merits.

3. In the meantime, if the Tribunal is constituted, it will be well open for this Court to transfer the writ petitions to the file of the learned Tribunal to be heard if a decision to the said effect is taken. Therefore, we are of the view that the writ petition should be entertained.

4. In the result, the appeal and the connected application are allowed and the order passed by the learned Single Bench is set aside. The writ petition is restored to the file of the learned Single Bench. The appropriate respondent is directed to file its affidavit-in-opposition within 12 weeks from the date of receipt of the server copy of this judgment and order. Reply, if any, by the appellant to be filed within a period of 3 weeks thereafter. List the writ petition for hearing before the appropriate Bench after 15 weeks.

5. No order as to costs.

6. 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)