

Item no. 13

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 1493 of 2022
with
IA No. CAN 1 of 2022

M/s. Devanshi Plyboard Industries Private Limited
vs.
Deputy Commissioner State Tax, Goods & Services Tax,
Bureau of Investigation (South Bengal) & Ors.

Appearance:

For the Appellant : Mr. Rituraj Chakraborty

For the respondent : Md. T. M. Siddiqui, Id. A.G.P.
Mr. N. Chatterjee

Heard on : 28.09.2022

Judgment on : 28.09.2022

T.S. Sivagnanam J.:

This intra-Court appeal is directed against the order dated 25.08.2022 passed in WPA 18707 of 2022 by which the learned writ court dismissed the writ petition filed by the appellant. Challenging the

order passed by the appellate authority, namely the Senior Joint Commissioner, North Bengal, the appellant has preferred the writ petition. The appeal was dismissed by the said order. The learned Single Judge was of the view that the present round of litigation is second round of litigation and the order being a speaking order, no interference is called for.

Learned counsel for the appellant would submit that an adverse report had been relied upon by the appellate authority while rejecting the appeal petition and such adverse report was not furnished to the appellant inspite of a representation dated 19.07.2022. Further, it is submitted that no effective opportunity of hearing was granted to the appellant by the appellate authority.

Learned Additional Government Pleader appearing for the State submits that the appeal was heard on three days namely on 20.07.2022; 22.07.2022 and 27.07.2022 and after affording sufficient opportunity of hearing, the appellate authority has passed a speaking order. Admittedly, as against the impugned order as on date there is no other remedy available under the Act since the Tribunal has not been constituted. Therefore, the appellant had to necessarily approach the learned writ court for challenging the said order. In our view, when such is the position, the learned writ court would have to examine as to the correctness of the order passed by the appellate authority as the writ petition is the first judicial forum, which will test the correctness of the order passed by the statutory appellate authority. In any event, we are

of the view that if there is an adverse report drawing certain conclusions against the appellant, then such material should be furnished to the appellant so as to enable to put forth the contentions and place all relevant facts. It appears that the representation given to the appellate authority on 19.07.2022 has not been considered and the copy of the adverse report has not been furnished.

Thus, we are of the view that one more opportunity can be granted to the appellant with a direction to the appellate authority to furnish the copy of the adverse report but however such direction can be given excepting two conditions.

It is seen that at the time of filing of the appeal, the appellant has deposited 10% of the disputed tax as per Form GST DRC-07 and the summary of the order dated 13.09.2019, the total tax demanded both CGST and SGST, comes to the tune of Rs. 50 lacs. Therefore, we are of the view that the appellant should be directed to pay a portion of the liability to be entitled to fresh opportunity of hearing. The appellant is also directed to pay the concerned authority a sum of Rs. 15 lacs within a period of six weeks from the date of receipt of the server copy of this order. If this condition is complied with, the appellant shall be furnished with a copy of the adverse report and on receipt of such report, the appellant shall submit a further representation and raise an additional ground which shall be considered by the appellate authority on merits and in accordance with law uninfluenced by any of the

observations, which has been made by the appellate authority in the order dated 07.10.2019.

We make it clear that the assessee should cooperate with the proceedings before the appellate authority and shall not pray for any further adjournment.

With the above observations, the instant appeal stands **disposed of**. Consequently, the connected application also stands **disposed of**. No costs.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)

Raja Pal/Amitava (AR. CT.)