Item No.14.

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.1496 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022

Debson Pumps Pvt. Ltd. & Anr.
Vs.
Assistant Commissioner of State Tax, Bowbazar Charge, Dharmatola & Anr.

Appearance:-
Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul ..... for the appellants.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee ... for the State.

JUDGMENT

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

Re: I.A. CAN 1 of 2022

1. This application has been filed to condone the delay of 109 days in filing the instant appeal.

2. We have heard Mr. Vinay Kr. Shraff, learned counsel appearing for the appellants and Mr. T. M. Siddique, 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 1 of 2022 is allowed.

Re: M.A.T. No.1496 of 2022

5. This intra Court appeal is directed against the order dated 25th April, 2022 in W.P.A. No.5663 of 2022. By the said order, the learned Single Bench has declined to grant any interim direction and has directed the respondents to file their affidavit-in-opposition. Aggrieved by such order, the appellants are before us.

6. We have heard Mr. Vinay Kr. Shraff, learned counsel appearing for the appellants duly assisted by Ms. Priya Sarah Paul, learned Advocate and Mr. T. M. Siddique, learned Advocate for the State duly assisted by Mr. Debasish Ghosh, learned Advocate.

7. The appellants had filed the writ petition challenging the order of the Assistant Commissioner of Revenue, Bowbazar Charge, Directorate of Commercial Taxes, Government of West Bengal dated 22nd February, 2022, which is a consolidated order for three periods. Admittedly, as against the order passed by the Assistant Commissioner of Revenue, there is an appellate remedy available under the Act in terms of Section 107(1) of the West Bengal Goods and Services Tax Act, 2017, which the appellants did not avail on account of the lockdown being imposed.

8. Mr. Shraff would submit that in terms of the order passed by the Hon'ble Supreme Court, time for filing such statutory appeals stood extended up to 20th February, 2022 and thereafter 90 days period, which is the normal period of limitation to prefer an appeal before the statutory appellate authority. The appellants are willing to file an appeal before the appellate

authority but has got two grievances. Firstly, the entire amount, which is alleged to be due and payable by the appellants on account of improper availment of input tax credit has been debited from the appellants' electronic credit ledger. The second grievance is that the department has issued a garnishee notice to the bankers of the appellants. Consequently, the bankers are not permitting the appellants to operate the bank account. Therefore, it is submitted that the appellants should be permitted to operate the bank account and the amount which has been debited from the credit ledger should be recredited to the appellants' account.

9. We have heard Mr. Ghosh, learned Government counsel on the above submission. In our view, no useful purpose would be served in keeping the writ petition pending and the following direction would not only take care the interest of the appellants but also would safeguard the interest of revenue. Accordingly, the appeal and the writ petition are disposed of with the following directions.

10. The appellants are directed to file a statutory appeal within a period of 30 days from the date of receipt of the

server copy of this judgment and order and remit 10% of the disputed tax along with the appeal memorandum. Upon such payment of the 10% of the disputed tax and filing the appeal, the Assistant Commissioner of Revenue shall address the appellants' bankers and keep in abeyance the garnishee notice so as to enable the appellants to operate their bank account.

11. The appellants are granted liberty to file appropriate application before the appellate authority with regard to the prayer that the excess amount, which has been debited from the appellants' electronic credit ledger should be recredited to their credit. If such a prayer is made, the appellate authority shall consider the same and pass orders on merits and in accordance with law, either along with the appeal or by treating the same as an interim application.

12. The appellate authority shall afford an opportunity of personal hearing to the appellants and hear and dispose of the appeal on merits and in accordance with law as expeditiously as possible but preferably within a period of 8 weeks from the date on which the personal hearing is concluded.

13. Since this Court has issued the above directions, the appellants cannot file an appeal in electronic format. Therefore, the appellate authority shall permit the appellants to file the appeal petition in physical format and this direction shall not be treated as a precedent.

14. With the above directions, the appeal and the connected application being CAN 2 of 2022 are disposed of.

15. No order as to costs.

16. 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)