

Item no. 11

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1616 of 2022
with
IA No.: CAN 1 of 2022

Utpala Saha
vs.
State of West Bengal & Ors.

Appearance:

For the Appellant : Mr. Biswajit Mukherjee
Mr. Sandip Choraria

For the Respondents : Mr. A. Ray, Ld. G.P.
Mr. T.M. Siddiqui
Mr. D. Ghosh
Mr. N. Chatterjee
Mr. V. Kothari

Heard on : 22.11.2022

Judgment on : 22.11.2022

T.S. Sivagnanam J.:

This intra-Court appeal filed by the writ petitioner is directed against the order dated 31st August, 2022 passed in WPA No.18597 of 2022 by which the learned Single Bench declined to grant

any interim order. The writ petition was filed challenging the order passed by the Appellate Authority, namely, the Senior Joint Commissioner of State Tax, 24 Parganas Circle, West Bengal dated 3rd January, 2022. The learned advocate appearing for the appellant submitted that the inherent error in the order passed by the Adjudicating Authority is that it is vitiated on bias as the officer who conducted the search and seizure operation issued the alleged show cause notice and adjudicated the case. Therefore, it is submitted that on the said ground the order passed by the Adjudicating Authority is liable to be set aside. The learned advocate appearing for the appellant is candid in his submission by stating that such contention was not raised at the time of adjudication nor it was one of the grounds raised before the Appellate Authority and it was pleaded for the first time in the writ petition. In any event, at this stage we cannot permit him to canvass such issue which alleges bias against the Adjudicating Officer. Therefore, we are not inclined to accept such submission of the learned advocate for the appellant. However, we find that there has been ultimate violation of natural justice. The appellant before us had made a written submission on 30th July, 2021 and in paragraph 7 therein the appellant has stated as follows:

*“The investigating authority relied on some documents, which were seized but no copy of the same has been provided to the appellant. The investigating authority also did not supply some of the annexures on which the alleged findings and the alleged impositions are based, **such as, seized documents C1 to C5 and I, as mentioned in sl. No.6,7 and 8 of column no.7 of***

the finding report dated 06.09.2019. Also details of documents seized, described in sl. No.1 to 10 of column no.6 has not been supplied to the appellant.”

The learned advocate for the appellant is further candid in his submission that after the learned writ Court declined to grant any interim order the authority has provided copies of documents mentioned serial no. 6, 7 and 8 and column 7 and also sl. No.1 to 10 of column no.6 but the other seized documents mentioned in C1 to C5 have not been provided. In our considered view an opportunity of hearing, rather a full-fledged hearing, before the Appellate Authority should be given to the appellant as the Appellate Authority will re-appreciate the factual position and take a decision based on the documents on record and after hearing the submission of the appellant. The appellant having been requested for copies of such documents and admittedly the same having not been supplied prior to the appeal is being disposed of, we are of the view that to that extent there has been violation of principal of natural justice. Therefore, the matter requires to be reconsidered by the Appellate Authority only on the basis of the documents mentioned in C1 to C5 which we directed to be furnished to the appellant. In that view of the matter, the order passed by the Appellate Authority is kept in abeyance and the appellant shall be furnished with copies of seized documents mentioned in C1 to C5 within 10 days from the date of receipt of the server copies of the order. The appellant is granted further 10 days time to raise additional grounds on the basis of the documents

provided to him. After the additional grounds are received by the Appellate Authority the authorized representative of the appellant be heard and a fresh decision be taken on merits and in accordance with law. It goes without saying that the Appellate Authority should not be biased based on his earlier conclusion which he had taken but should take an independent view of the matter and pass a speaking order and in accordance with law.

The appeal is **allowed** to that extent. Consequently CAN 1 of 2022 and the writ petition is disposed of.

There shall, however, no order as to costs.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)