

Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 21.12.2022

DELIVERED ON:21.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1642 of 2022

with

I.A. No.CAN 1 of 2022

with

I.A. No.CAN 2 of 2022

Debasish Ghosh.

Vs.

Union of India & Ors.

Appearance:-

Ms. Sweta Mukherjee,

Mr. Arup Sarkar

...

for the appellant.

Mr. Uday Sankar Bhattacharya,

Mr. Tapan Bhanja

....

for Union of India.

JUDGMENT

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

Re : I.A. No.CAN 1 of 2022

1. This is an application to condone the delay of 14 days in filing the instant appeal.

2. We have heard Ms. Sweta Mukherjee, learned counsel appearing for the appellant duly assisted by Mr. Arup Sarkar, learned Advocate and Mr. Uday Sankar Bhattacharya, learned senior standing counsel appearing for the respondents duly assisted by Mr. Tapan Bhanja, learned junior standing counsel for the respondents.

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 for condonation of delay being I.A. No.CAN 1 of 2022 is allowed.

5. There shall be no order as to costs.

Re: MAT 1642 of 2022

6. This intra-Court appeal by the writ petitioner is directed against the order dated 20th June, 2022 in W.P.A. 10186 of 2022. The writ petition was filed challenging an adjudication order passed by the Joint Commissioner, Howrah CGST & CX Commissionerate. The learned Single Bench dismissed the appeal on the ground that an alternate remedy is available before the

Commissioner (Appeals). Aggrieved by such order, the writ petitioner has filed the present appeal.

7. We have heard Ms. Sweta Mukherjee, learned counsel appearing for the appellant duly assisted by Mr. Arup Sarkar, learned Advocate and Mr. Uday Sankar Bhattacharya, learned senior standing counsel appearing for the respondents duly assisted by Mr. Tapan Bhanja, learned junior standing counsel for the respondents.

8. The grounds, which have been canvassed before this Court in this appeal are all disputed questions of fact, which the appellant has to essentially agitate before the appellate authority. The appeal remedy available to the appellant is not only an effective remedy but an efficacious remedy. Therefore, the appellant would not be justified in bypassing the said remedy. Therefore, we agree with the view of the learned Single Bench that the appellant ought to have preferred an appeal to the Commissioner (Appeals) instead of filing the writ petition.

9. For such reason, the appeal is dismissed and the order passed in the writ petition is affirmed. The appellant is granted liberty to file the appeal within 30 days from the date of receipt of this order before the concerned Commissioner (Appeals) and if the same is filed, the appeal shall not be

rejected on the ground of limitation but shall be considered in accordance with law.

10. There shall be no order as to costs.

11. 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,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)