

Item No.12.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 16.12.2022

DELIVERED ON:16.12.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1653 of 2022

with

I.A. No.CAN 1 of 2022

Vijander Kumar Goel

Vs.

State of West Bengal & Ors.

Appearance:-

Ms. Sweta Mukherjee,

Mr. Arup Sarkar

...

for the appellant.

Mr. T. M. Siddique,

Mr. Debasish Ghosh,

Mr. D. Sahu

....

for the State.

JUDGMENT

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

1. This intra- Court appeal filed by the writ petitioner is directed against the order dated 25th August, 2022 in WPA No.17393 of 2022. The appellant was aggrieved by the order

passed by the authority dismissing the appeal filed by the appellant under Section 84 of the WBVAT Act and under Section 9(2) of the CST Act, 1956 primarily on the ground that the mandatory pre-deposit of 15% of the disputed tax was not made.

2. The appellant's contention is that till the appellant received the garnishee order, they were not aware that the appeal was rejected.

3. In our considered view, such a plea cannot be raised by the appellant because unless and until the mandatory pre-deposit is complied with, there is no appeal in the eye of law. Having realised the factual position, now the appellant is ready and willing to effect the pre-deposit so as to enable the appellant to pursue the appeal on merits.

4. One difficult, which has been expressed by the learned Advocate for the appellant is that the appellant's bank account has been attached and therefore, unable to draw any money from the bank to effect the pre-deposit.

5. In the light of the above, the following directions will meet the ends of justice.

6. The appeal stands disposed of with the direction to the respondent to forthwith lift the order of attachment of the appellant's bank account with a further direction to the

appellant to effect the mandatory pre-deposit within a period of three working days from the date on which the bank attachment is lifted and if the same is complied with, the appellate authority shall restore the appeal to its file and number and the appeal be heard on merits and in accordance with law and be disposed of by passing a reasoned order.

7. In the light of the above direction, it goes without saying that the order of dismissal of the appeal stands recalled and the appeal is restored to the file and number of the appellate authority.

8. There shall be no order as to costs.

9. 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)