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AN
RP

17.11.2022
Ct. No. 16

MAT 1746 of 2022
+
IA No.: CAN 1 of 2022

M/s. Maity Transport & anr.
vs.
The Additional Joint Commissioner, CGST & CX, Haldia
Commissionerate & ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Ms. Payal Shaw

... for the appellant

Mr. Bhaskar Prasad Banerjee
Mr. Abhradip Maity

... for the Haldia CGST & CX

Mr. Bhupendra Gupta

... for the respondent no. 2

We have heard learned counsel for the parties at length.

Learned counsel for the appellant/writ petitioner is aggrieved by the order passed by the learned Single Judge in WPA 21767 of 2022 dated 29.09.2022 declining to grant any interim order in the matter till the writ petition is heard and disposed of. From the said order dated 29.09.2022, we find that the learned writ Court was prima facie satisfied that the appellant has made out the case for entertaining the writ petition. Further, it is observed that for adjudication of the dispute raised in the writ petition, affidavits are required to be filed. Therefore, in the interregnum, if the respondent department initiates any step for recovery or to take coercive action against the appellant, then it may render the writ petition infructuous.

The legal issue, which has been raised by the appellant in the writ petition, is whether the adjudicating authority had already issued show cause notice by invoking extended period of limitation and adjudicated the same for a subsequent period can once again the adjudicating authority invoke the extended period of limitation to adjudicate the same issue for an earlier period. To decide this issue, it is observed by the learned writ court that affidavits are required to be filed by the respondent authorities.

Thus, the challenge in the writ petition appears to be the jurisdiction from the authority to initiate such proceedings. It goes without saying that the appellant would not be entitled to canvass the merits of the dispute before the learned writ court except the jurisdictional issue of the proceeding as provided under the statute. In any event, the learned writ court had granted time to file affidavits, and directed the matter to be listed in the Monthly List of January, 2023, we are of the view that till the matter is listed, the interest of the appellant needs to be protected and to that extent we direct the respondent authority not to initiate any recovery proceedings or take coercive action against the appellant pursuant to the order impugned in the writ petition till the writ petition is heard and disposed of. In order to ensure that the writ petition is listed on a particular date at the earliest, we direct the Registry to list the writ petition for hearing on 16.01.2023

and the interim order shall operate till that time. If for any reason, the writ petition is not listed on 16.01.2023, the interim order granted by us shall continue till the matter is listed before the learned writ court.

The respondents are directed to file their affidavit-in-opposition well before the date on which the case is to be heard and reply, if any, be filed within the said period.

With the above observations, the instant appeal stands **disposed of**. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)