

Item no. 08

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 1751 of 2022
with
IA No.: CAN 1 of 2022
IA No.: CAN 2 of 2022

Medha Servo Drives Private Limited & Anr.

vs.

The Assistant Commissioner of State Tax, Bureau of Investigation
(South Bengal), Durgapur Zone & ors.

Appearance:

For the Appellants : Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah

For the Respondents : Mr. A. Ray, Ld. G.P.
Mr. T.M. Siddiqui
Mr. D. Ghosh
Mr. D. Sahu

Heard on : 17.11.2022

Judgment on : 17.11.2022

T.S. Sivagnanam J.:

In Re. CAN 1 of 2022

We have perused the affidavit filed in support of the application for condonation of delay and we are satisfied that sufficient causes have been shown in preferring the instant appeal. Hence, the delay is condoned and the application for condonation of delay is allowed.

In Re : MAT 1751 of 2022

IA No. CAN 2 of 2022

This intra-Court appeal filed by the writ petitioners is directed against the orders dated 20th April, 2022 and 22nd June, 2022 passed in WPA No. 6537 of 2022, in which the learned Single Bench extended the time for filing affidavit-in-opposition by the respondent and simultaneously declined to grant any interim order to the appellant. With this grievance the appellants are before us by way of this appeal.

We need not to take much trouble to take a decision in this matter. In fact, the writ petition itself can be disposed of. We are convinced to say so after reading the order passed by the appellate authority, being the Senior Joint Commissioner of State Tax (Appeals), Commercial Estate, City Centre, Durgapur dated 6.4.2022. The order is a 23 pages order. At the first blush, it gives us an impression that this is a speaking order after discussing all issues which were canvassed by the appellants/writ petitioners. However, on a closer reading of the order, we find that discussion is only at page 23 and page nos.1 to 22 are extract of the submissions made by the appellants and various decisions which were cited by the appellants and also certain decisions

which the appellate authority appears to have included on his own. In any event, the short question is to whether full tax and penalty could have been demanded from the appellants on the alleged ground that they contravened Section 129(1)(a) of the Central Goods and Services Tax Act, 2017 read with West Bengal Goods and Services Tax Act, 2017.

The case of the appellants is that a single invoice was raised by the appellants to M/s. Chittaranjan Locomotive Works, a public sector undertaking, carrying on operation in the State of West Bengal. The goods which were to be supplied to the said Public Sector Undertaking was of very huge in size and, therefore, the appellants had raised multiple e-weigh bills and loaded the goods into three trucks. One of the three trucks had already reached the consignee which was not disputed by the Revenue. The other two trucks could not reach the destination within the validity of the e-weigh bills i.e. 23.08.2021. The vehicle along with the goods were intercepted by the authorities on 25.08.2021. The appellants had explained that there is absolutely no mens rea on their part and there was no intention to evade payment of tax. Nevertheless, the Adjudicating Authority had imposed full tax and penalty upon the appellants and aggrieved by such order, the appellant had filed the appeal before the First Appellate Authority. The short issue which the Appellate Authority was required to consider as to whether there is any mens rea on the part of the appellants in attempting to evade payment of tax. Unfortunately, though the order passed by the Appellate Authority is 22 pages order, there is absolutely

no discussion on the question as to whether the mens rea was established. It is well settled that by merely using the expression “mens rea”, it would not amount to concluding that there was a willful attempt on the part of the dealer to evade the payment of tax. The concerned authority or the First Appellate Authority, is required to record the reasons in writing as to how and in what manner mens rea was established. Since this is lacking in the order passed by the Appellate Authority dated 6.4.2022, we are of the considered view that the matter should be remanded back to the Appellate Authority for fresh consideration to decide this short issue as to whether there is any mens rea on the part of the appellants to evade payment of duty.

Accordingly, the appeal and the connected application stand **allowed**. Consequently, the writ petition is allowed and the orders passed by the learned Single Judge dated 20.04.2022 and 22.06.2022 are set aside and the matter stands remanded to the Appellate Authority for fresh consideration and the Appellate Authority is directed to consider the aspect of the mens rea and afford an opportunity of personal hearing to the authorized representative of the appellants and pass a fresh order on merits and in accordance with law.

We make it clear that we have not dealt with the matter on merits and it is the Appellate Authority to take a decision without being influenced in any manner by any observations which we have made in this order.

The appellants have furnished a bank guarantee for the entire amount of tax and penalty. Since we have set aside the order passed by the Appellate Authority and remanded the matter back to the Appellate Authority for fresh consideration, the Appellant/Writ petitioner is not required to keep the bank guarantee alive. Instead of bank guarantee we direct the appellants to furnish a bond to the satisfaction of the concerned authority for the entire amount of tax and penalty.

There shall, however, no order as to costs.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)