8 ns/ pg 18.01. 2022.

M.A.T. 1777 of 2017
With
I.A. CAN 1 of 2017 (old CAN 10303 of 2017)

Debojyoti Paul.
Vs.
Sales Tax Officer, Bhowanipur Charge & Ors.

Mr. Anil Kumar Dubey,
Mr. Rajarshi Chatterjee,
Ms. Sretapa Sinha ... For the appellant.

Mr. Anirban Ray, Ld. G. P.,
Mr. Talay Masood Siddiqui,
Mr. S. Mukherjee,
Mr. Debasish Ghosh,
Mr. N. Chatterjee ... For the State.

The deficit court fees as indicated by the Registry shall be paid not later than 19th January, 2022 by the appellant.

This intra-Court mandamus appeal is directed against the order dated 17th April, 2017 in W.P. No.3576(W) of 2016. The prayers sought for in the writ petition is to declare the amended Section 84 of the West Bengal Value Added Tax, 2003 as invalid. The learned Single Bench by the impugned order has disposed of the writ petition. Being aggrieved by the same, the appellant has preferred this appeal.

We have heard Mr. Anil Kumar Dubey, learned counsel appearing for the appellant and Mr. Anirban Ray, learned Government Pleader duly assisted by Mr. Soumitra Mukherjee, learned counsel and Mr. Debasish Ghosh, learned counsel.

The learned counsel appearing for the appellant, on instructions, submitted that the respondent authorities have recovered one portion of the pre-deposit amount by way of bank attachment and the appellant is willing to pay the remaining amount so as to enable him to pursue his appeal before the Appellate Authority. The respondents cannot have any objection for such course being adopted. The learned Government Pleader appearing for the respondents submitted that it is not clear as to whether the recovery was made by the assessing officer pursuant to the order of assessment or it was towards any adjustment for the pre-deposit. Be that as it may, the assessee is entitled to pursue the statutory appellate remedy available under the Act. The statute mandates that 15% of the disputed tax be remitted as pre-deposit to enable the appellant to pursue his appeal before the statutory Appellate Authority. Even assuming, any recovery was made by the assessing officer either before filing the appeal before the Appellate Authority or after filing the appeal before the Appellate Authority, such recovery should be subject to the ultimate decision in the statutory appeal.

Therefore, while disposing of this appeal, we direct the appellant to remit the difference amount so as to satisfy the statutory condition imposed under Section

84 of the Act by complying with the pre-deposit condition of 15% of the disputed tax. In this regard, the Appellate Authority is directed to issue a computation computing the 15% of the disputed tax, which is required to be deposited after giving credit to the amount recovered by way of bank attachment. On compliance with the pre-deposit condition, the appellant would be entitled to pursue his appeal, which shall be considered and decided on merits and in accordance with law.

The appeal is disposed of along with connected application.

Urgent photostat certified copy of this order, if applied for, be given to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)