

Item No.14.

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.1860 of 2022

with

I.A. No.CAN 1 of 2022

with

I.A. No.CAN 2 of 2022

M/s. Shraddha Overseas Private Limited & Anr.

Vs.

**The Assistant Commissioner of State Tax, Chandni Chawk
& Princep Street Charge & Ors.**

Appearance:-

**Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah**

...

for the appellants.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee,
Mr. V. Kothari**

....

for the State.

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 33 days in filing the instant appeal.

2. We have heard Mr. Ankit Kanodia, learned counsel appearing for the appellants duly assisted by Ms. Megha Agarwal, learned Advocate and Mr. T. M. Siddique, learned counsel appearing for the respondents/State.

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. There shall be no order as to costs.

Re: MAT 1860 of 2022

5. This appeal has been filed by the writ petitioner challenging an order passed by the learned Single Bench declining to grant interim relief sought for. The learned Advocate for the appellants as advanced their arguments in the main writ petition itself. Therefore, by this order, the appeal and the writ petition stand disposed of.

6. On going through the order passed by the appellate authority dated 30th June, 2022, it is seen that it is an elaborate order in which the entire factual matrix has been brought on record by the appellate authority. Interestingly, in page 5 of the order, under the heading "Observations of this chair" substantial portion of the transaction have been found by the appellate authority to have been done with valid documentation. However, a doubt had arisen in the mind of the appellate authority with regard to the genuineness of the transaction going by the pay load of the vehicles, which was used for transporting the goods in question.

7. After noting these facts, the appellate authority straight away refers to the action taken by the tax authorities of Ultadanga wherein two separate enquiries were conducted in the business premises of M/s. Suraj Enterprise and the enquiry was conducted on 14th November, 2019 and 17th February, 2020. Admittedly, the transaction done by the appellant was in October, 2018. Thus, to conclude that the other end dealer is a non-existing dealer, there should be material to show that on the date when the appellants had transaction with him, there was no valid registration. If the cancellation of the registration of the other end dealer is by way of retrospective cancellation,

then the question would be as to whether it would affect the transaction done by the appellants, more particularly when the appellants have been able to show that the payments for the transaction have been done through banking challans.

8. Thus, we find that the appellate authority was solely guided by the action taken by the Ultadanga tax authorities without examining the specific facts and circumstances of the case on hand.

9. Further, the case of the appellants is that in the show cause notice, there was no such allegation against the appellants and though several grounds were raised by the adjudicating authority, none of the grounds were considered.

10. Thus, we find that the order passed by the appellate authority to be a non-speaking order in the sense that there is no independent finding rendered by the appellate authority qua the allegation against the appellants. Therefore, it is a fit case where the matter should be remanded back to the appellate authority to specifically consider the contentions, which was advanced by the appellants and also the fact that the other end dealer's registration was cancelled with retrospective effect.

11. For the above reasons, the appeal along with connected application and the writ petition are allowed and the order

passed by the appellate authority dated 30th June, 2022 is set aside and the matter is remanded back to the appellate authority for fresh consideration after affording an opportunity of personal hearing to the authorised representative of the appellants.

12. There shall be no order as to costs.

13. 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)