Item No.15.

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.1861 of 2022
with
I.A. No.CAN 1 of 2022

Subal Krishna Dey (HUF).
Vs.
The Assistant Commissioner of State Tax, Rajakatra Charge & Ors.

Appearance:-

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah ... for the appellants.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Soumitra Mukherjee,
Mr. D. Sahu .... for the State.

JUDGMENT

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

1. This appeal has been filed by the writ petitioner challenging the order dismissing the writ petition, which was filed challenging a garnishee order.

2. After 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, we find that the correct facts have not been placed by the writ petitioner before the Writ Court. The case of the appellant appears to be that there was violation of principles of natural justice inasmuch as the assessment order was not communicated to the appellant and only the text of the order was uploaded in the portal on 27th August, 2019, which came to the knowledge of the appellant only after the garnishee order was issued for recovery of the interest and penalty.

3. The learned Government counsel appearing for the State / respondents has produced the copies of the order sheets, which clearly show that the order dated 17th January, 20220 in DRC-07 was issued with digital signature on 27th August, 2019 and available at the dealer's end in the digital formal on 17th January, 2020. One Mr. Subal Mallick, authorised representative of the appellant, approached the authorities for a hard copy of

the same and the copy of the same was given to him, which was acknowledged by said Subal Mallick, who has not only put his signature but has also given his mobile phone number.

4. Thus, it is not a case where the appellant was not communicated with the assessment order. In any event, as against the assessment order, the appellant is entitled to file an appeal. It is not in dispute that the amount of tax payable has already been recovered from the credit ledger and therefore, this Court is of the view that the appellant can be granted liberty to prefer an appeal not only against the assessment order but also as against the demand for interest and penalty.

5. In the result, the appeal stands disposed of along with connected application by directing the appellant to file an appeal before the appellate authority within a period of 30 days from the date of receipt of the server copy of this order.

6. If the appellant complies with this direction, then the appellate authority shall entertain the appeal without rejecting the same on the ground of limitation. So far as the pre-deposit is concerned, since the entire tax has already been recovered from the appellant through the credit ledger, it appears that there is no such requirement of pre-deposit to be complied with by the appellant. The appellant is at liberty to raise all

issues before the appellate authority, which shall be considered in accordance with law.

7. In the light of the above directions, the appellant shall be permitted to file the appeal by way of manual filing.

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)