Form No. J(2).
Item No(s).6 to 11

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 01.12.2022

DELIVERED ON: 01.12.2022

CORAM:
THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T 640 of 2020
With
I.A. No. CAN 1 of 2020

The Additional Director General,
Directorate General of Goods and Service Tax Intelligence,
Kolkata Zonal Unit
VERSUS
M/s. Corandum Impex Pvt. Limited & Ors.

With
MAT 641 of 2020
+
IA No.CAN 1 of 2020

The Additional Director General,
Directorate General of Goods and Service Tax Intelligence,
Kolkata Zonal Unit
Vs.
Ms. Cuprite Marketing Private Limited & Ors.

With

MAT 642 of 2020
+
IA No.CAN 1 of 2020
The Principal Additional/ Additional Director General,
Directorate General of Goods and Service Tax Intelligence,
Kolkata Zonal Unit

Vs.
M/s. Amazonite Steel Private Limited & Ors.
With
MAT 643 of 2020
+
IA No.CAN 1 of 2020

The Principal Additional/ Additional Director General, Directorate General of Goods and Service Tax Intelligence, Kolkata Zonal Unit
Vs.
M/s. Cuprite Marketing Private Limited & Ors.

With

MAT 644 of 2020
+
IA No.CAN 1 of 2020

The Additional/ Additional Director General, Directorate General of Goods and Service Tax Intelligence, Kolkata Zonal Unit
Vs.
M/s. Corandum Impex Private Limited & Ors.

With

MAT 645 of 2020
+
IA No.CAN 1 of 2020
The Additional/ Additional Director General, Directorate General of Goods and Service Tax Intelligence, Kolkata Zonal Unit
Vs.
M/s. Amazonite Steel Private Limited & Ors.

Appearance:-
Mr. Bhaskar Prasad Banerjee
Mr. Tapan Bhanja
.........................for the appellants
Mr. Arijit Chakrabarti
Mr. Nilotpal Chowdhury
.........................for the respondents

JUDGMENT

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

1. These intra-Court appeals are directed against the common order dated 4th March, 2020 passed in a batch of writ petitions, the lead matter of which is WPA 18429 (W) of 2019. The appellant revenue had succeeded before the learned single Bench on the legal issue and the assessees are on appeal against the said order in MAT 515 of 2020. The present appeals have been filed by the revenue only against that portion of the order directing the Department to pay costs of Rs.5,00,000/- to each of the three writ petitioners.

2. We have gone through the order passed by the learned single Bench, more particularly paragraph 11 of the said order, wherein the appellant/Revenue has been reprimanded and cost has been imposed. The learned writ Court was of the opinion that the action of the authorities is illegal by keeping the provisional attachment in state of continuance for a period from 5th June, 2019 when the first order of provisional attachment ceased to operate, till October, 2019 when fresh order of provisional attachment was passed. Interpreting Section 83(2) of the Act, it was pointed out that the provisional attachment shall cease upon expiry of one year and, therefore, the learned writ Court concluded that it is incumbent upon the authorities to release the provisional attachment by informing the bank or by issuing a fresh order

of provisional attachment if the law so allows. On the legal issue as to whether subsequent provisional attachment order can be issued, the learned writ Court has held that Section 83 empowers the competent authority to issue an order for provisional attachment of property including the bank account, if its of the opinion that such step is necessary for protecting the interest of the Revenue. Further, the learned Single Bench pointed out that Section 83(2) permits continuation of provisional attachment order for a period of one year from the date of the order after which it shall cease to remain in effect. However, there is nothing in the section, which indicates that upon completion of the prescribed period, a fresh order cannot be issued. Therefore, the Court held that after expiry of the time period, the appropriate authority may be of the opinion that such attachment is further required to protect the interest of the Revenue and, therefore, issue a fresh order upon compliance of all formalities under Section 83(1) of the Act. Accordingly, this issue was answered in favour of the Revenue.

3. This finding has been challenged by the assessees by filing individual appeals which are to be heard and decided separately. However, the only issue is whether the learned writ Court could have come to the conclusion that costs of Rs.5,00,000/- is payable to each of the assessees. In our

view, when interpretation was required to be considered and one of the issues was decided in favour of the Revenue and against the asseessees, we are of the view that imposition of costs and that too at the rate of Rs.5,00,000/- for each of the assessee is not called for.

4. Mr. Chakrabarti, learned counsel for the respondents/assessees submitted that the learned writ Court noted the conduct of the Revenue and then came to the conclusion that there was high-handedness on the part of the Department, at least for the period of four months, for which they kept the attachment order alive in spite of the order of attachment having ceased to have any legal effect.

5. In our considered view, imposition of costs on the department is purely a discretion of the Court and technically we are not required to hear the party concerned as to whether at all costs has to be imposed on the Department. In any event, a fine question of law has been raised by the assessees in their appeal arising out of the very same common order and the present appeals filed by the Revenue is confined only to that extent where cost has been imposed. Therefore, in the facts and circumstances of the case, we are of the view that it is not a case where cost has to be imposed, as directed by the learned writ Court.

6. In the result the appeals filed by the Revenue are allowed to the extent by deleting and vacating the observations, which led to imposition of cost as also the cost which has been imposed. We make it clear that the correctness of the order passed by the learned Single Bench will be decided on the other grounds in the appeal filed by the assessees, which shall be heard and decided separately.

7. We also make it clear that the assessees will be entitled to canvass the issue as to whether the attachment could have continued despite the order of attachment having ceased to have an effect after a period of one year.

8. In the result, the appeals are **allowed**. Consequently, the connected applications are **disposed** of.

2. 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.)**

RAJA/Pallab, AR(Ct.)