

Item No.12.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 20.01.2023

DELIVERED ON: 20.01.2023

CORAM:

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

**M.A.T. No.18 of 2023
with
I.A. No.CAN 1 of 2023**

**Manilal Thakkar & Co. & Anr.
Vs.
Union of India & Ors.**

Appearance:-

**Mr. Vinay Kr. Shraff,
Ms. Priya Sarah Paul,
Mr. Priyanka Sharma**

...

for the appellants.

**Mr. Siddhartha Lahiri,
Ms. Sanjukta Gupta**

...

for the Union of India.

**Mr. Shiv Shankar Banerjee,
Mr. Tapan Bhanja**

...

for the CGST & CX Authority.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,**

Mr. V. Kothari

...

for the State.

JUDGMENT

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

1. This intra-Court appeal filed by the writ petitioners is directed against the order dated 3rd January, 2023 in W.P.A. No.28404 of 2022 in and by which the learned writ Court declined to grant any interim order in favour of the appellants.

2. On perusal of the various prayers sought for in the writ petition, we find that one of the prayers is to declare Section 16(2)(c) of the CGST /WBGST Act as unconstitutional and against the scheme of the enactment. If that be so, the question of granting an interim order would not arise as it would go against the settled legal principle that there is a presumption as to the validity of a statute unless it is struck off.

3. In any event, the learned Single Bench has directed the respondents to file their affidavit-in-opposition within a period of four weeks from 3rd January, 2023, which period is yet to expire. Accordingly, while affirming the order passed by the learned Single Bench, this appeal is disposed of with a direction to the respondents to file their affidavit-in-

opposition not later than 10th February, 2023; reply thereto, if any, may be filed within 17th February, 2023.

4. We request the learned Single Bench to advance the hearing of the writ petition from June, 2023 to either in the last week of February, 2023 or in the first week of March, 2023.

5. With the above directions, the appeal is disposed of along with the connected application.

6. There shall be no order as to costs.

7. 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)