Item No.13.

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.36 of 2023
with
I.A. No.CAN 1 of 2023

Surojit Das.
Vs.
Assistant Commissioner of State Tax, Goods and Services Tax, Bureau of Investigation (South Bengal), Durgapur & Ors.

Appearance:-
Mrs. Rita Mukherjee,
Mr. Ghanshyam Jha,
Mr. Rowsan Jha ... for the appellant.

Md. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee,
Mr. D. Sahu ... for the State.

JUDGMENT

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

1. This intra-Court appeal is directed against the order dated 21st December, 2022 passed by the learned Single Bench in W.P.A. No.28031 of 2022 and the subsequent order dated 3rd January, 2023 by which the affidavit-in-opposition had been directed to be filed by the respondents / department. The goods in question have been intercepted and they have been seized and an order to the said effect has been passed by the Assistant Commissioner, Bureau of Investigation, South Bengal, Durgapur zone, who has passed an order dated 18th November, 2022 demanding penalty of Rs.30,22,600/-. The Deputy Commissioner of State Tax, Bureau of Investigation, South Bengal, Durgapur zone has to the conclusion that there is no document evidence produced by the appellant to explain the discrepancies, which have been pointed out as they had only produced a letter dated 6th December, 2022 of the appellant addressed to the Inspector, Central Division, Range – IV, CGST & CX, Kolkata North Commissionerate and attached a copy of the report dated 2nd December, 2022, which is illegible.

2. The question involved in the writ petition is whether the authority was justified in holding that the appellant is not the owner of the goods. The appellant would contend that the said

order is illegal as it is contrary to clause no.6 of the circular dated 31st December, 2018 issued by the Central Board of Indirect Taxes and Custom, GST Policy Wing, which states that if the invoice or any other specified documents is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner and only in case if the invoices or other specified documents is not accompanying the consignment of goods, then in such cases, the proper officer should determine, who should be declared as the owner of the goods.

3. It is submitted by the learned Advocate appearing for the appellant that this circular has not been taken note of by the Deputy Commissioner of State Tax, Bureau of Investigation. Furthermore, there is no rival claimant claiming the said goods.

4. In any event, the correctness of the order passed by the Deputy Commissioner, State Tax will be considered in the writ petition, which is still pending after affidavit-in-opposition is filed.

5. The learned Advocate for the appellant would submit that in terms of Section 129(1)9a) of WBGST /CGST Act, the appellant can seek for release of the goods without prejudice to the rights and contentions of either parties. In fact, the learned Single

Bench in its order dated 21st December, 2022 has recorded the submissions on behalf of the appellant that they are ready and willing to pay security equivalent to the penalty in terms of Section 129 (1)(a) of the WBGST/CGST Act. However, such a prayer has not been made before the authority in the forum, which is required to be made.

6. Therefore, we dispose of the appeal with a direction to the appellant to file an application before the Deputy Commissioner of State Tax, Goods and Services Tax, Bureau of Investigation, South Bengal, Durgapur zone seeking relief under Section 129(1) (a) of the said Act and such application shall be filed within one week from the date of receipt of the server copy of this judgment and order. On receipt of the said application, the said authority shall independently consider such a prayer uninfluenced by any of the observations made in its order dated 12th December, 2022, which is subject matter of the writ petition and such order shall be passed within a period of 10 days from the date on which the application is filed by the appellant.

7. It is made clear that such a prayer made by the appellant is without prejudice to the rights and contentions of the appellant in the writ petition nor the stand taken by the department in their affidavit-in-opposition that may be filed.

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)