

Item no. 05

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 147 of 2023
with
IA No. CAN 1 of 2023

Fresenius Kabi Oncology Ltd.
vs.
Union of India & Ors.

Appearance:

For the Appellants : Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Nazynder
Mr. Saurabh Bagaria
Mr. Arindam Chandra
Mr. Atish Ghosh

For the Respondents : Mr. Bhaskar Prasad Banerjee

Heard on : 15.03.2023

Judgment on : 15.03.2023.

T.S. Sivagnanam J.:

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 11.01.2023 passed by the learned Single Judge in WPA 3173/2020. In the said writ petition, the appellant had challenged the order passed by the revisional authority viz. The

Additional Secretary of Government of India, Ministry of Finance, Department of Revenue by which the order passed by the appellate authority denying the claim for rebate is affirmed. Though the writ petition was entertained and affidavit-in-opposition was filed, the learned Single Judge had set aside the order passed by the revisional authority and remanded the matter back for fresh consideration on the sole ground that the written arguments filed by the appellant were not considered in a proper perspective by the revisional authority. We find that the order of remand passed by the learned Single Judge is a second order of remand. Earlier a Division Bench of this Court in MAT 796 of 2016 dated 27.08.2019 had set aside the order passed by the revisional authority and remanded the matter back for fresh consideration. It is pursuant to such order and the order impugned in the writ petition was passed. Since the writ petition is of the year 2020 and affidavit-in-opposition has already been filed, no useful purpose would be served in remanding the matter back for fresh consideration as the appellant did not raise the plea of violation of principles of natural justice on the ground that the written arguments were not considered.

2. We have heard learned counsel for the parties elaborately. Learned senior counsel for the appellant would contend that this submission of violation of principles of natural justice was undoubtedly an ultimate submission, as the order impugned in the writ petition was challenged on factual and legal grounds.

3. Therefore, we are of the view that the remand back of the matter once again to the revisional authority is a wasteful purpose and the matter is to be decided on merits and in accordance with law by the learned writ court.

4. For the above reasons, the appeal stands **allowed** and the order in the writ petition is set aside and the writ petition stands allowed to its original file and number of the learned Single Bench to be heard and decided on merits and in accordance with law. Liberty is granted to the appellant to file affidavit-in-reply to the affidavit-in-opposition filed by the respondents in the writ petition. Consequently, the connected application also stands **allowed**.

5. List the matter before the appropriate Bench in the month of May, 2023 for further consideration.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)