Item no. 07

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 151 of 2023

with

IA No. CAN 1 of 2023

M/s. Radha Mohan Purshottam Das Agarwal & Anr.

vs.

The Deputy Commissioner of State Tax, Jorabagan and Jorasanko Charge, Government of West Bengal & ors.

Appearance:

For the Appellants	:	Mr. Ankit Kanodia Ms. Megha Agarwal Mr. Jitesh Sah
For the Respondents	:	Mr. A. Ray, Ld. G.P. Mr. D. Ghosh
Heard on	:	02.03.2023
Judgment on	:	02.03.2023

T.S. Sivagnanam J.:

This intra-Court appeal has been filed by the writ petitioners is directed against the order dated 03.01.2023 passed by the learned Single Judge in WPA 28710/2022 by which the learned Single Judge directed the respondents to file affidavit-in-opposition, however, declined to grant any interim order. The appellants being aggrieved are before us by way of this appeal.

The orders, which are impugned in the writ petition, were passed by the Deputy Commissioner of State Tax, Jorabagan and Jorasanko Charge, Government of West Bengal dated 9th September, 2021 as affirmed by the Appellate Authority, namely, the Senior Joint Commissioner, Kolkata North Circle, North 24 Parganas dated 28th October, 2022. The issue involved in the proceeding is as to whether transitional Input Tax Credit under the provisions of the Value Added Tax Act, 2003 (for short "VAT Act 2003") should be availed by the appellants after they had secured a fresh registration under the Goods and Services Tax Act, 2003 after the provisions came into force with effect from 01.07.2017. The Original Authority proceeded on the basis that as the appellants were not registered persons on the appointed date and as their registration under the VAT Act having been cancelled, they could not have availed Input Tax Credit. Simultaneously, the Original Authority observed that the appellants should have made a claim for refund of the excess Input Tax Credit under the VAT Act 2003. The appellants in the reply to the show cause notice contended that opportunity of personal hearing sought for, admittedly had not been granted to the appellants. When the matter was taken up on appeal before the Appellate Authority the said authority also concurred with the Adjudicating Authority on the same grounds as mentioned in the original adjudication order. The fact remains that the appellants' registration under the VAT Act 2003 was cancelled on 05.06.2017 and in terms of the statutory provisions the appellants were entitled to apply for setting aside such order of cancellation within 15 days from the date of receipt of the copy of the of the order.

The appellants applied for setting aside the order and restoration of their registration by application dated 15.06.2017 but nothing has been placed on record in the present proceeding before the writ Court nor any of the orders which were impugned in the writ petition about the fate of the application filed by the appellants. After the appellants secured the registration under the GST Act on 26th July, 2017, they had filed an application in Form GST TRAN-01 to avail transitional Input Tax Credit from the erstwhile regime to GST regime. Even thereafter on 07.12.2018 the appellants once again applied for restoration of VAT registration. It is only on 23.07.2021 a show cause notice was issued in Form GST DRC-01A. Thus, the core issue is as to whether without deciding the application for revoking the order of cancellation of registration, the authority could have taken a decision in the matter and whether they would be justified in not allowing the petitioner to avail the transitional Input Tax Credit from erstwhile regime to the GST regime. This issue, which is the core issue in the matter, has not been addressed by the Adjudicating Authority or by the Appellate Authority.

Thus, considering the peculiar facts and circumstances of the case, we are of the view that the matter should be re-heard by the Original Authority specifically deciding the application filed by the appellants on 15th June, 2017 for restoration of the VAT registration followed by the order dated 07.12.2018.

For the above reasons, we are inclined to remand the matter back to the Adjudicating Authority, who shall afford an opportunity of personal hearing to the authorized representative of the appellants and pass a fresh order on merit and in accordance with law taking note of the observations made in the preceding paragraphs.

In the result, both the appeal and the connected application stand **allowed** and the writ petition also stands **allowed** and the orders impugned in the writ petition passed by the Adjudicating Authority and the Appellate Authority are set aside and the matter stands remanded back to the Adjudicating Authority, who shall afford an opportunity of personal hearing to the appellants or their authorized representative and decide the core issue, namely the application filed by the appellants on 15th June, 2017 for restoration of the VAT registration without being influenced by any of the observations made by us hereinabove. The above direction shall be complied with by the Adjudicating Authority within a period of four weeks from the receipt of the server copy of this order.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)