Item No. 04.

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

HEARD ON: 30.03.2023

DELIVERED ON: 30.03.2023

CORAM:

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

MAT 563 of 2023
with
I.A. NO. CAN 1 of 2023

Jyote Motors Bengal Private Limited & anr.
vs.
Additional Director, Directorate General of Goods & Services Tax Intelligence Kolkata Zonal Unit & ors.

Appearance:-

Mr. Vinay Kumar Shraff
Ms. Priya Sarah Paul

… for the appellant

Mr. T. M. Siddiqui
Mr. D. Ghosh
Mr. D. Sahu

… for the State

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja

JUDGMENT

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

1. We have heard the learned counsel for the parties. After hearing the learned counsel for the parties for a considerable length of time, the prayers sought for by the learned counsel for the appellants to withdraw the writ petition with a liberty to file a fresh writ petition appears to be reasonable and acceptable. This is more so because the appellant seeks to challenge the order in original dated 11th January, 2023 which was passed much after filing of the writ petition. For such purpose, applications were filed for addition of parties and to modify certain portion of the prayers sought for in the writ petition which have all been disposed of by the impugned order passed by the learned Single Bench.

2. In the light of the prayer made by the learned counsel for the appellant, the appellant is granted liberty to withdraw WPA 16773 of 2022 with a liberty to file a writ petition with comprehensive prayers. Learned counsel for the appellants submitted that the respondent department should not proceed further pursuant to the order in original. The order in original was passed on 11th January, 2023 and received by the appellants a couple of days thereafter. Calculating the period of limitation for filing an appeal, if the appellants had chosen such a remedy, the time would expire much after 10th April, 2023. Therefore, in any event, the respondent department cannot take any coercive action against the appellants/assesses within the period of limitation stipulated under the Act within which time the aggrieved assessee can avail an alternate remedy provided under the Act. Therefore, we are of the view that the appellants are granted liberty to file a fresh writ petition and if the same is done within the period of 10 days from the date of receipt of the server copy of this order, till then

the respondent department shall not initiate any coercive action against the appellants. It is made clear that Court has not examined the merits of the contentions, which were raised by the appellants in this appeal or in the writ petition, are left open.

3. In the result, the appeal stands **disposed of.** Consequently, the application being CAN 1 of 2023 stands disposed of and the writ petition stands dismissed as withdrawn with liberty to the appellants to file a fresh writ petition within the time limit taking all the points raised in the writ petition as well as other points which may be available to the parties.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

RP/AN(AR.CT.)