28.04.2023
Item No.7
gd/ssd

MAT/682/2023
IA NO: CAN/1/2023, CAN/2/2023
YKK INDIA PRIVATE LIMITED
VS
SENIOR JOINT COMMISSIONER OF REVENUE, STATE TAX AND ANR.

Mr. Vinay Kumar Shraff,
Ms. Priya S. Paul
..for the Appellant.

Md. T.M. Siddiqui,
Mr. D. Ghosh,
Mr. D. sahu
..for the State.

Re: CAN 1 of 2023

1. CAN 1 of 2023 has been filed by the appellant seeking condonation of delay of 55 days in filing this appeal.

2. Learned counsel for the appellant has referred to the explanation which has been furnished in the application and also has made submission in respect of the explanation for the delay.

3. We find that the delay in filing this appeal has been sufficiently explained and the appellant was prevented from filing the appeal within time on account of bona fide reason.

4. Hence, CAN 1 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 682 of 2023

5. This intra court appeal by the writ petitioner is directed against the order dated 20th January, 2023 passed by the learned Single Bench in WPA 1166 of 2023.

6. One portion of the order passed by the learned Single Bench is in favour of the appellant whereby the respondents have been directed not to encash the bank guarantee which was furnished by the appellant as condition precedent for release of the vehicle in question. The prayer sought for by the writ petitioner was to stay the order passed by the original authority as well as the appellate authority imposing 200% penalty on the ground that the goods were transported without proper documents. If such a prayer is acceded to, it would amount to allowing the writ petition at an interlocutory stage which is not permissible under law. Therefore, the learned Single Bench was right in not granting the interim order sought for as it would amount to allowing the writ petition.

7. Hence, we are not inclined to interfere with the order passed by the learned Single Bench. However, taking note of the fact that the bank guarantee for more than a sum of Rs.28 lakhs has already been furnished and that the goods were meant for export and it is a revenue neutral case, the writ petition could be heard at an early date.

8. Therefore, we dispose of this appeal by directing the respondents to file their affidavit-in-opposition to the writ petition within 12th May, 2023 and the writ petition be listed before the appropriate learned Single Bench on 18th May, 2023 with the request to the learned Single Bench to take up the hearing of the said writ petition.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)