09.06.2023
Item No.11
gd/ssd

MAT/692/2023
IA NO: CAN/1/2023
BRINTO KUMAR ROY
VS
UNION OF INDIA AND ORS.

Mr. Promit Majumdar
..for the Appellant.

Mr. L. Vishal Kumar
..for the Respondent No.1.

Mr. Bhaskar Prosad Banerjee,
Mr. Abhradip Maity
..for the Respondent CGST & CX.

1. This intra court appeal by the writ petitioner is against the order passed by the learned Single Bench dated 24th March, 2023 in WPA 4969 of 2023.

2. The writ petition was filed challenging an order of adjudication dated 27.12.2022 passed by the Additional Commissioner, Howrah CGST & C. Ex Commissionerate.

3. Admittedly, the order impugned in the writ petition is an appealable order and appeal lies to the Commissioner of Central Tax (Appeal II), Kolkata.

4. The learned Single Bench was right in refusing to entertain the writ petition on the ground of availability of an efficacious alternate remedy.

5. That apart, we are informed that the Revenue has also preferred an appeal with regard to the

certain miscalculation of the amount of service tax payable by the appellant.

6. The learned advocate for the appellant strenuously contends that the order passed by the adjudicating authority dated 27.12.2022 is in violation of principles of natural justice inasmuch as the documents which are placed for consideration were not taken into consideration by the adjudicating authority.

7. If that be so, it will be open to the appellant to agitate all the points before the appellate authority and the appellate authority will be able to appreciate and reappreciate the documents which are not on record and take a final decision in the matter. Taking note of the fact that the writ petition was filed well within the period of 60 days from the date of receipt of the order of adjudication, we are inclined to grant liberty to the appellant to file a statutory appeal.

8. In the result, while refusing to interfere with the order and direction issued by the learned Writ Court, we direct the appellant to file an appeal as against the order of adjudication dated 27.12.2022 before the concerned appellate authority and if such appeal is filed within a period of 15 days from the date of receipt of the server copy of this order, the appellate authority shall not reject the appeal on the ground of limitation but consider the appeal in accordance with the relevant statute.

9. With the above direction, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)