23.06.2023
Sl. No.6
PG/ KS
Ct.1

M.A.T. 841 of 2023
With
IA No. CAN 1 of 2023

Touhid Mondal
Versus
Chief Commissioner of Customs & Ors.

Mr. Anil Kumar Duggar
.....For the Appellant

Mr. Shiv Shankar Banerjee
Mr. Tapan Bhanja
.....For the CGST Authority

1. This intra-Court appeal by the writ petitioner is directed against the order dated 13th April, 2023 in W.P.A. 6503 of 2023 by which the writ petition was dismissed.
2. The petitioner filed the writ petition alleging that the order in original was passed by the respondent authorities on 29th April, 2022 in which there was a demand for service tax.
3. It appears that initially the learned writ court was of the opinion that liberty may be granted to the appellant to file a statutory appeal. However, subsequently upon hearing the submissions of the learned Standing Counsel for the respondents, the Court came to the conclusion that correct facts

were not placed before the Court and therefore, the writ petition stood dismissed.

4. The learned Standing Counsel appearing for the respondents would vehemently contend that the order in original was served in the address of the proprietor at 1376, Lima Palace, Purba Srikrishnapur, Purba Medinipur, Pin - 721635. The address given in the letter pad of the appellant is 3rd floor, 3/8, Akash Ganga Complex, Manjushree, Haldia, Purba Medinipur.

5. The learned Standing Counsel appearing for the respondents would submit that the appellant had refused to receive the order, which was sent by speed post. Under normal circumstances, the Court will not grant any indulgence to a person, who has not been diligent. However, in the instant case, it appears that the show-cause notice was personally served on the proprietor of the appellant on 17th November, 2021 and thereafter, he had participated in the proceedings and as of now, the order in original was passed on 29th April, 2022.

6. Further, we note that on 27th January, 2023, a sum of Rs.18 lakhs has already been recovered by way of bank attachment.

7. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the appellant can be granted liberty to file a

statutory appeal. This direction is issued considering the peculiar facts and circumstances of the case and shall not be treated as a precedent. In order to enable the appellant to file a statutory appeal, the proprietor of the appellant is directed to personally go over to the office of the Assistant Commissioner, Central GST and Central Excise, Haldia Commissionerate on a working day within three days from the date of receipt of server copy of this order. On the said date, when the proprietor appears in person before the Assistant Commissioner, a true copy of the order in original shall be handed over to the proprietor of the appellant and with the said true copy, the appellant is entitled to file a statutory appeal, which shall be received by the appellate authority and the appeal be considered on merits without rejecting the same on the ground of limitation.

8. So far as the payment of pre-deposit for filing the appeal is concerned, the said amount of pre-deposit payable shall be adjusted from the amount already recovered from the appellant. The appellant shall file the appeal within one week from the date on which the true copy of the order in original is handed over by the Assistant Commissioner to the proprietor of the appellant.

9. This order shall not be treated as a precedent.

10. In the light of the above directions, the remarks, which have been made in the order passed in the writ petition against the learned counsel stands expunged in its entirety.

11. With the aforesaid directions, the appeal and the connected application stand disposed of.

12. No costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)