11.08.2023
Item No.8
gd/ssd

MAT/881/2023
IA NO: CAN/1/2023

EAST HOOGHLY POLYPLAST PRIVATE
LIMITED AND ANR.
VS
THE STATE OF WEST BENGAL AND ORS.

Mr. P.K. Das,
Mr. Subrata Mukherjee
..for the Appellants.

Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Ms. S. Sanyal
..for the State.

1. This intra court appeal is directed against the order passed by the learned Single Bench dated 3rd April, 2023 in WPA 672 of 2021.

2. By the said order the learned writ court dismissed the writ petition and relegated the petitioners to file an appeal against the order of adjudication passed by the respondent authorities.

3. Aggrieved by such order, this appeal has been filed.

4. We have elaborately heard the learned advocate for the appellants and the learned Government counsel appearing for the respondent authorities.

5. Initially, when the writ petition was entertained, an order was passed on 04.02.2021 directing affidavit to be filed by the respondents in the writ petition. However, the court did not defer the adjudication of the show cause notice, but directed the appellants to participate in the hearing so that the adjudicating authority can proceed with the adjudication process and pass an order, however, not to publish the order without the leave of the court. In terms of the directions issued by the learned Single Bench in its order dated 04.02.2021, the appellants had participated in the hearing and the authority has passed the adjudication order dated 09.03.2021. This order came to be passed during the pendency of the writ petition and the learned writ court directed the appellants to file a statutory appeal.

6. The learned counsel appearing for the appellants would submit that several questions of law which were raised in the reply to the show cause notice dated 09.01.2021 has not been considered by the adjudicating authority and has been ignored. The appellants have raised the following questions which, according to the appellants, ought to have been decided by the adjudicating authority and since these are questions of law, the learned writ court ought to have decided the question instead of relegating the appellants to file the statutory appellate remedy.

7. The questions which have been raised before this court are as hereunder:

"(i) Whether the State Tax Officers Respondents herein, have any authority to levy and collect tax under Section 9(1) of WBGST Act, without determination of "place of supply of goods" as mentioned in Section 8(1) of IGST Act read with Section 2(64) of WBGST Act.

(ii) Whether the demand of tax by the impugned Show Cause Notice dated 11.11.2020 issued under WBGST Act, without determination of "intra-State Supplies of goods" is beyond jurisdiction. (Show Cause Notice Page-194).

(iii) Whether the Officers of "Bureau of Investigation" under the WB-VAT Act, can act under the WBGST Act, 2017 without any order of appointment.

(iv) Whether "Bureau of Investigation" constituted under Section 8 of W.B.VAT Act, 2003 has any authority to conduct search and seizure under Section 67 of WBGST Act, 2017.

(v) Whether the Officers of "Bureau of Investigation" are "the proper officer" to raise demand of tax under Section 74(5) of WBGST Act, 2017."

8. After considering the submissions made by the learned advocate for the appellants and perusing the questions of law which have been formulated, we

find that the questions framed cannot be adjudicated without considering the factual position. In other words, the adjudication would require examination of facts for the purpose of answering the questions of law which have been framed by the appellants. Therefore, it is not pure question of law which has to be decided but what is required to be decided is a mixed question of fact and law.

9. Therefore, we are of the view that the appellants should avail the statutory appellate remedy which is not only effective as well as efficacious.

10. Needless to state that the appellate authority shall consider the questions which have been framed by the appellants before this court and take note of the relevant facts and then give a finding on such questions which are being urged by the appellants.

11. For the above reasons, we are not inclined to interfere with the order passed by the learned Single Bench and the appeal stands disposed of by directing the appellants to file the statutory appeal within a period of 45 days from the date of receipt of the server copy of this order. In the said appeal petition the appellants shall raise the five questions which have been raised before this court which shall be considered by the appellate authority after taking note of the facts of the case and the other submissions which the

appellants may make on the merits of the matter and pass a reasoned order on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)