Form No. J.(2)
Item No.4

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

HEARD ON: 21.07.2023

DELIVERED ON: 21.07.2023

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 1049 of 2023
With
I.A. No. CAN 1 of 2023
With
I.A. No. CAN 2 of 2023

Tapati Sarkar
Vs.
The Assistant Commissioner, State Tax,
Barrackpore Charge & Ors.

Appearance:-

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee ....**for the appellant**

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique
.........**for the respondents/State**

JUDGMENT

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

In Re: I.A. No. CAN 2 of 2023

1. We have heard Mr. Dugar, learned advocate appearing for the appellant and Mr. T.M. Siddique, learned Government counsel appearing for the respondents/State.

2. There is delay of 35 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.

3. I.A. No.CAN 2 of 2023 is allowed and the delay in filing the appeal is condoned.

<u>In Re: M.A.T. 1049 of 2023</u>

4. This intra-Court appeal by the writ petitioner is directed against the order dated 5th April, 2023 in W.P.A. 5918 of 2023 by which the appellant had challenged the order passed by the Senior Joint Commissioner, the appellate authority, who dismissed the appeal filed by the appellant against the order passed by the original authority viz., the Deputy Commissioner, State Tax, Barrackpore Charge on the ground that 10% of the disputed tax amount has not been pre-deposited for the purpose of entertaining the appeal.

5. It is not in dispute that soon after the dismissal of the appeal on the said ground of non-payment of pre-deposit by order 8th February, 2022, the original authority recovered the entire tax amount on 11th February, 2022.

6. It is the appellant's case that pre-deposit was effected by the appellant and to substantiate the same, e-challan dated 17th January, 2023 evidencing deposit of Rs. 63,800/- was produced. It is the submission of the learned advocate appearing for the respondent authorities that the said sum is not towards deposit of 10% of the disputed tax but it is to set off some other liability due and payable by the appellant.

7. Be that as it may, as of now the entire tax has been recovered. That apart, the appellate remedy provided for under the WBGST Act is a very valuable right conferred on an assessee because the appellate authority will be able to re-appreciate the factual position. Therefore, on a technical ground, the appellant could not be non-suited by taking into consideration a subsequent event i.e.., recovery of the entire tax on 11th February, 2022. In fact, the original authority while passing the order dated 16th May, 2023 has acknowledged the fact that the tax amount is already recovered in full. However, it is seen that the appellant's bank account has been attached. The reason for attachment of the bank account is to facilitate the recovery of interest and penalty as and when the same is recoverable.

8. In our considered view, when the appeal has been directed to be entertained and entire tax has been recovered, there will be absolutely no justification for the respondents/department to continue the bank attachment.

9. In the light of the above, the writ petition as well as the appeal and the connected application (I.A. No. CAN 1 of 2023) are disposed of by setting aside the order dated 8th February, 2022 passed by the appellate authority and restoring the appeal to the file of the appellate authority with a direction to the appellate authority to consider the appeal on merits and in accordance with law and the question of demanding any pre-deposit would not arise since the entire tax has already been recovered.

10. In the light of the above observations, the respondent authorities are directed to lift the bank attachment order within a period of 48 hours from the date of receipt of the server copy of this order.

11. The appeal shall be disposed of by the appellate authority after affording an opportunity of personal hearing to the authorised representative of the appellant and an expeditious decision be taken in the appeal petition preferably within eight weeks from the date on which the personal hearing is concluded.

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

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab AR(Ct.)