18.08.2023
Item No.9
gd/ssd

MAT/1239/2023
IA NO: CAN/1/2023
MUKHTAR AHMED
VS
ASSISTANT COMMISSIONER, STATE TAX,
BELIAGHATA CHARGE AND ORS.

Ms. Rita Mukherjee,
Mr. Ghanshyam Jha
..for the Appellant.

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

1. This intra court appeal by the writ petitioner is directed against the order dated 15th June, 2023 in WPA 12065 of 2023 for which the writ petition was dismissed on the ground of delay and latches.

2. Aggrieved by the same, the appellant is before us by way of the appeal.

3. We have elaborately heard the learned advocate for the appellant and the learned standing counsel appearing for the respondent authorities.

4. The appellant was aggrieved by an order computing the tax payable in the order dated 08.04.2022 directing the appellant to pay a sum of Rs.38,441.78/- towards Central Tax and Rs.38,441.78/- towards State Tax on the ground that the appellant was not eligible to claim tax credit. Several grounds have been raised before us contending

as to how the entire proceedings have initiated on account of various procedural statutory irregularities. Further, it is submitted that there was no allegation of any fraud and willful mistake on the part of the appellant. However, in the order dated 08.04.2022 the Assistant Commissioner, State Tax, Beliaghata Charge for the first time has made such an allegation. The appellate remedies are available to the appellant aggrieved as against the order passed by Assistant Commissioner. However, the assessee could not file the appeal on account of a fracture sustained by the appellant and he was hospitalized and as a result of which, he could not take steps to challenge the order dated 08.04.2022. In the meantime, the entire amount of Rs.76,883.56/- has been recovered from the Credit Ledger of the appellant and the appellant's bank account has also been attached.

5. Considering the peculiar facts and circumstances of the case and also taking note of the fact that the entire tax have been recovered by the revenue and the interest of revenue has been secured, we find this case to be a unique case where a remedy can be granted to the appellant by affording an opportunity to the appellant to file a statutory appeal before the appellate authority.

6. We make it clear that this order has been passed taking into note of the peculiar facts and

circumstances of the case and not treated as a precedent.

7. In the result, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition stands disposed of by directing the appellant to prefer statutory appeal before the appellate authority within a period of 30 days from the date of receipt of the server copy of the order. If such appeal is filed, the appellate authority shall entertain the appeal without insisting upon any pre-deposit since the entire tax has already been recovered.

8. In the light of the above, the respondent authority is directed to lift the attachment of the appellant's bank account within three days from the date of receipt of the server copy of the order.

9. Needless to state that the merits of the case has not been gone into and it is for the appellate authority to take note of the submissions of the appellant and take a decision on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)