Form No. J.(2)
Item No.3

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

HEARD ON: 15.12.2023

DELIVERED ON: 15.12.2023

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

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 772 of 2023
With
I.A. No. CAN 1 of 2023

Amar Nath Shaw
Vs.
The State Tax Officer,
State Tax, West Bengal & Ors.

Appearance:-
Ms. Rita Mukherjee
Mr. Ghanashyam Jha ....**for the appellant**

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique
Mr. T. Chakraborty
Mr. S. Sanyal ....**for the State**

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 16th June, 2023 in W.P.A. 12363 of 2023. By the said writ petition, the appellant had challenged an adjudication order dated 17th January, 2022, by which the demand made in the show cause notice dated 14th December, 2021 was confirmed by the authority. The learned writ Court

had dismissed the writ petition primarily, on the ground that there is an alternate remedy available under the Act as against the order of adjudication and also on the ground that the petitioner had approached the learned writ Court after a period of more than 1 and ½ years and there is no explanation for the inordinate delay.

2. After having heard the learned advocate appearing for the appellant and the learned Government Pleader appearing for the respondent, we find that the appellant was not diligent in prosecuting the matter. The appellant had been given three opportunities by the adjudicating officer i.e. on 3rd September, 2021, 17th September, 2021 and 27th October, 2021 but the appellant failed to avail those opportunities and did not appear before the authority. However, the fact remains that much after that, the show cause notice dated 14th December, 2021 was issued.

3. On a perusal of the show cause notice, we find that irrelevant portions of the show cause notice have not been struck off and it appears that the standard statutory format has been adopted. Nonetheless, the tax payable by the appellant along with interest and penalty has been computed and a demand has been made.

4. Much prior to the issuance of show cause notice, sometime in March, 2021 the appellant had submitted a representation to the Joint Commissioner, State Tax, West Bengal, Taltala and New Market Charge requesting an investigation to be done and also requested for return of the documents, which were seized for which the appellant agreed to furnish a bond. The manner in which the adjudicating authority had concluded the proceeding by order dated 17th January, 2022 cannot be faulted as the appellant

defaulted in availing the opportunity granted by the adjudicating authority. In the interregnum, more than Rs. 3,00,000/- (Rupees Three Lakh) has already been recovered from the electronic credit ledger of the appellant and the account of the appellant has also been attached. Thus, considering the peculiar facts and circumstances of this case, this Court is of the view that one more opportunity may be granted to the appellant to put forth his submission.

5. Learned advocate for the appellant submitted that since all the documents were seized, the authority may be directed to furnish copies of the documents, cost of which will be borne by the appellant and thereafter the appellant will submit his reply to the show cause notice and the matter may be adjudicated and an order be passed on merits and in accordance with law.

6. Considering the peculiar facts and circumstances of this case and also taking note of the conduct of the appellant, we cannot issue a blanket order by setting aside the order of adjudication in its entirety without any condition. Therefore, we direct the appellant to pay a further sum of Rs. 3,00,000/- (Rupees Three Lakh) , which shall be without prejudice to the rights and contentions and to enable the appellant to effect such payment, the attachment of the appellant's bank account shall be lifted. Upon such payment, the appellant shall be furnished with the copies of the seized documents, the cost of which shall be remitted by the appellant and 15 days time shall be granted to the appellant from the date of receipt of the copies of the seized documents to submit his reply to the allegations in the show cause notice. Thereafter, an opportunity of personal hearing may be

granted to the authorised representative of the appellant and fresh orders be passed on merits and in accordance with law.

7. The appellant shall appear before the concerned authority on the date fixed and no adjournment shall be granted. In the event, the appellant fails to comply with any of the conditions, as mentioned above, the benefit of this order will not enure to the appellant and the appeal will stand automatically dismissed without reference to this Court.

8. It is made clear that this order has been passed considering the peculiar facts and circumstances of the case and cannot be treated as a precedent.

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

10. No costs.

11. 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.)

RP/PG AR(Ct.)