Item no. 03

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 1086 of 2022
with
IA No. CAN 1 of 2022

M/s. Ultimax Business Solutions Private Limited & anr.
vs.
State of West Bengal & ors.

Appearance:

For the Appellants	:	Mr. Nilotpal Chowdhury Mr. Deepak Sharma
For the Respondents	:	Mr. A. Ray, Ld. G.P. Mr. T.M. Siddiqui, AGP Mr. D. Ghosh Mr. N. Chatterjee
Heard on	:	13.03.2023
Judgment on	:	13.03.2023.

T.S. Sivagnanam J.:

This intra-Court appeal filed by the writ petitioners is directed against the order dated 7th July, 2022 passed by the learned Single Judge in WPA 11836/2022. The writ petition was dismissed on the ground that the appellants should avail the alternate remedy provided for under the provisions of West Bengal Goods and Services Tax Act (for short "WBGST Act") and the writ petition cannot be entertained. Aggrieved by the same, the appellants have filed the present appeal.

We have heard learned counsel for the parties.

The prima facie grievance which the appellants have focused in the writ petition is that the appellants were not given adequate opportunity to put forth their submissions. It is not in dispute that after the enquiry, which was conducted in the business premises of the appellants on 13th January, 2021, the appellants had submitted various records on 28th January, 2021. Thereafter, the authority had issued a fact sheet dated 23rd December, 2021 for which the appellants had given a reply on 29th December, 2021. This was followed by a fact sheet dated 19th January, 2022 for which the appellants had given a reply on 25th January, 2022. Show cause notice was issued under Section 74 of the WBGST Act stating that the appellants should submit their reply not later than 7th March, 2022. In the annexure to the show cause notice, no date has been assigned for grant of personal hearing. This was followed by a fact sheet under Section 74(1) of the WBGST Act dated 18th February, 2022. On 5th May, 2022 the appellants requested for 45 days time to submit their reply. The said request was neither accepted nor rejected. However, on 21.04.2022 a modified show cause notice under Section 74(1) of WBGST Act was issued. On receipt of the modified show cause notice the appellant sent a representation dated 5th May, 2022 stating that the revised fact sheet sent by the department is not matching with the show cause notice issued because of difference in the amount and they are trying to reconcile the same and requested for grant of extension of time. However, this request was neither considered nor rejected and the authority proceeded to pass final order dated 23.05.2022. The above facts have been stated out to demonstrate that the appellants had been denied an effective and adequate opportunity to put forth their submission. It is not as if that the appellants had not cooperated with the department as at the first instance they had submitted a bunch of documents along with the letter dated 28th January, 2021.

In the aforesaid facts and circumstances, this Court is of the view that opportunity to be granted to an assessee to put forth their submission should be an effective opportunity and should not be illusory. For such reasons, we are inclined to remand the matter back to the original authority for fresh consideration. In the result, the appeal is allowed and the final order passed in the writ petition is set aside and there will be a direction on the appellants to treat the order passed under Section 74(9) of the WBGST Act as a show cause notice and submit a detailed reply covering all aspects including the allegations in the first show cause notice as well as in the modified show cause notice. The appellants are also at liberty to raise jurisdictional issue as it is the contention of the appellants that the modified show cause notice is not tenable in the eye of law. The appellants shall submit their reply along with requisite documents within 15 days from receipt of the server copy of the order. Thereafter the concerned authority shall fix a date for personal hearing of the appellants or the authorized representatives of the appellants and then proceed to pass an order on merits and in accordance with law.

If the appellants are able to reconcile all the transactions due opportunity shall be granted by the concerned authority to the appellants to do so. The concerned authority shall pass a final order within a period of 15 days from the date on which the personal is concluded.

Thus, for the above reasons, the instant appeal is **allowed** and the connected application is **disposed of**.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)