

17.11.2023
Item No.03
RP/AN
Ct. No.1

MAT 1535 of 2023
+
IA No.CAN 1 of 2023
Saru Kankani
Vs.
Union of India & Ors.

Mr. Subrata Das
.....for the Appellant

Mr. Bhaskar Prasad Banerjee
Ms. A. Rajyashree
..for the respondents

1. This intra-Court appeal filed by the appellant is directed against the order dated 6th June, 2023 passed in WPA 9490 of 2023. The appellant had filed the writ petition questioning the correctness of the Order-in-Original dated 22nd February, 2023 passed by the Assistant Commissioner, CGST & CX::Burrabazar Division, Kolkata North CGST & CX Commissionerate on the ground that the appellant had filed an application under the provisions of SVLDR Scheme 2019 and the outcome of the application was not disclosed to the appellant/assessee. This was the sum and substance of the reply dated 2nd February, 2023 given by the assessee to the show cause notice. On a plain reading of the Order-in-Original dated 22nd February, 2023 we find that the authority has recorded its opinion as to why the stand taken by

the appellant/assessee is not sustainable and thereafter proceeded to discuss the matter on facts and rendered finding. The correctness of the Order-in-Original dated 22nd February, 2023 can be questioned by filing an appeal before the Commissioner (Appeal-I), Kolkata in terms of section 35 of the Central Excise Act, 1944 read with Section 84(1) of the Finance Act, 1944. We find that there was no exceptional circumstances for the appellant to bypass the appellate remedy available under the statute, which is not only an effective remedy but also an efficacious remedy. Therefore, we are of the view that the learned Single Bench has rightly refused to entertain the writ petition. Accordingly, the appeal and the application are dismissed.

2. However, if the appellant files an appeal before the Appellate Authority within thirty days from the date of receipt of the server copy of this order, the authority shall entertain the appeal without rejecting the same on the period of limitation and decide the appeal on merit and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)