Item No.4.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 13.03.2023

DELIVERED ON: 13.03.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 1279 of 2022
With
I.A. No.CAN 1 of 2023

Md. Kalim Ansari.
Vs.
The Superintendent Range – II, Central Tax, Shibpur Division and Ors.

Appearance:-

Ms. Rita Mukherjee,
Mr. Abhijat Das .... for the appellant

Mr. Bhaskar Prasad Banerjee,
Mr. Abhradip Maity .... for the respondents 1 and 2.

Mr. Asomdipta Santra ... for the Union of India.

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 25th July, 2022 in WPA No.14971 of 2022. The appellant is not aggrieved by the order in its entirety as the writ petition had been admitted but is aggrieved by the direction issued by the learned Single Bench stating that the admission and pendency of the writ petition will not affect the pe3nding proceedings. With this grievance, the appellant has filed the present appeal.

2. We have heard Ms. Rita Mukherjee, learned Advocate for the appellant duly assisted by Mr. Abhijat Das, learned Advocate, Mr. Bhaskar Prasad Banerjee, learned senior standing counsel for the respondents/ department and Mr. Asomdipta Santra, learned Advocate for the Union of India at great length.

3. Admittedly, the order impugned in the writ petition is an order of adjudication dated 29th April, 2022 whereunder the adjudicating authority held that the appellant/assessee is primarily engaged in providing manpower recruitment /supply agency service, construction services other than residential complex, including commercial / industrial buildings or civil

structures / erection/ commissioning and installation service and Works Contract service and accordingly, computed the amount of service tax payable at Rs.37,16,169/- and equal amount of penalty has also been imposed.

4. The learned Advocate appearing for the appellant had elaborately referred to the various grounds, which have been raised in the writ petition and submitted that the writ petition having been admitted, the Court ought to have protected the interest of the appellant in the interregnum till the respondents file their affidavit-in-opposition and the writ petition is heard and decided on merits.

5. In our considered view, no useful purpose would be served either to the appellant or to the revenue in keeping the writ petition pending since the order impugned in the writ petition is an order of adjudication and the correctness of such an order is required to be tested by the appropriate appellate authority, who will be able to re-appreciate the factual position and also decide on any jurisdictional issue that may be raised by the appellant.

6. Therefore, we are of the view that the writ petition as well as this appeal can be disposed of with the following directions.

7. In the result, the appeal and the writ petition are disposed of by directing the appellant to file an appeal to the appropriate appellate authority challenging the order dated 29th April, 2022 and such appeal shall be filed within a period of three weeks from the date of receipt of server copy of this judgment and order after complying with the pre-deposit condition of paying 7.5% of the disputed tax. In such appeal, the appellant shall be at liberty to raise all points including the point of jurisdiction.

8. Till such time, the respondents / department shall not initiate any coercive action against the appellant. The appellate authority shall decide the appeal on merits and in accordance with law without rejecting the same on the ground of limitation. The appellant shall also be afforded with an opportunity of personal hearing by the concerned appellate authority.

9. There shall be no order as to costs.

10. 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, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)