

12 24.11.2023
SM Ct. No. 01

MAT 1912 of 2023
(CAN 1 of 2023)

M/s. Radha Mohan Purshottam Das Agarwal & Anr.
Vs.
The Assistant Commissioner of State Tax, Jorabagan &
Jorasanko Charge, Government of West Bengal & ors.

Mr. Ankit Kanadia,
Ms. Megha Agarwal,
Mr. Jitesh Sah

... for the appellants

Mr. Anirban Ray
Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. Saptak Sanyal

... for the State

1. The appellants have filed this appeal challenging an order passed by the learned Single Bench refusing to grant an interim order during the pendency of the writ petition. The appellants had challenged the order passed by the Senior Joint Commissioner of State Tax, Kolkata North & PG Circle, Kolkata dated 7th August, 2023 by which the Appellate Authority affirmed the order passed by the Assistant Commissioner of State Tax, Jorabagan and Jorasanko Charge, Kolkata North dated 11th April, 2023. By the said order the original authority demanded tax of Rs.9,88,136/- as well as penalty equivalent to 10 per cent under Section 73(9) and interest.

2. The appellants' contention is that because the Tribunal has not been constituted the writ petition has been filed and the demand ought to have been stayed in its entirety. As the appellants have already paid 10 per cent of

the demand, when the statutory appeal was filed before the First Appellate Authority.

3. Considering the facts and circumstances of the case, if the interim order is not granted there is likelihood of recovery proceedings being initiated and the writ petition itself may be rendered infructuous. However, there cannot be blanket order of stay but there will be a condition which will be imposed on the appellants.

4. For the above reasons, the appeal stands disposed of by directing the appellants to pay a further 10 per cent of the disputed tax within a period of three weeks from the date of receipt of the server copy of this order and if this condition is complied with the demand and the balance tax penalty and interest shall remain stayed till the writ petition is disposed of.

5. Consequently, the connected application is also disposed of.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)