16 24.11.2023
Ct. No. 01
AN

MAT 1953 of 2023
(CAN 1 of 2023)

Jalan Builders Private Limited
Vs.
Assistant Commissioner, State Tax, Ballygunge Charge

Mr. Vinay Kr. Shraff
Miss. Priya Sarah Paul
Ms. Sanchita Dey
... for the appellant

Mr. A. Ray
Md. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... for the respondent

1. We have heard learned counsel for the parties at length.

2. This intra court appeal filed by the writ petitioner is directed against the order dated 26.09.2023 passed by the learned Single Judge in WPA 22032 of 2023 by which the learned writ court refused to grant any interim order. The appellant had filed the writ petition challenging a final order passed under Section 73(9) of the WBGST Act, 2017 read with Rule 142(5) of the WBGST Rules, 2017 dated 17.10.2022.

3. Learned counsel representing the State raised a preliminary objection as regards the maintainability of this appeal on the ground that this is an order which is impugned in the writ petition which is appellable order and the appellant did not file a statutory appeal and, therefore, the writ petition itself was not maintainable and, consequentially, this appeal is not maintainable.

4. Learned counsel for the appellant submitted that after the order was passed by the original authority dated 17.10.2022, the entire amount of tax has been recovered from the appellant. Had the appellant filed the statutory appeal, the appellant would have required to pre-deposit only 10% of the disputed tax, however, appellant failed to avail of such an opportunity to do so. The explanation offered by the appellant is that due to inadvertence, the appellant did not see the correct inbox whether the notices are uploaded which is titled as "additional notices and orders". It is submitted that on account of the inadvertent error committed by the appellant, the appellant should not be penalized. Further, it is submitted that there is 'amnesty scheme' and in terms of the notification issued by the Central Board of Indirect Tax and Customs dated 02.11.2023, the appellant is entitled to avail the benefit of 'amnesty scheme'. Thus, considering the facts and circumstances of the case, we are of the view that the writ petition and this appeal can be disposed of with the following directions.

5. The appeal and the writ petition are **disposed of** by directing the appellant to file a statutory appeal before the appellate authority challenging the final order dated 17.10.2022 and if this appeal is filed within a period of 30 days from the date of receipt of the server copy of this order, the appellate authority shall not reject the appeal on the ground of limitation. Further, the appellant is not required to pre-deposit 10% of the disputed tax since the entire tax

as computed in the order dated 17.10.2022 has already been recovered.

6. Learned counsel for the appellant submitted that direction may be issued to the Assessing Officer to re-credit 90% of the disputed tax since the appellant is required to pre-deposit only 10% of the disputed tax for preferring statutory appeal and at this juncture we do not propose any such direction since the appellant did not file the statutory appeal within the period of limitation. However, we request the appellate authority to dispose of the appeal at an early date preferably within a period of 30 days from the date on which the appeal is presented in proper form. It will be well open to the appellant to seek for appropriate directions in the appeal with regard to re-crediting 90% of the disputed tax before the appellate authority.

7. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)