15.12.2023
Item No.06
Ct. No. 1
RP/Aloke

MAT 1997 of 2023
with
CAN 1 of 2023

M/s. Simoco Systems and Infrastructure Solutions Limited & Anr.
Vs.
The Deputy Commissioner of State Tax Bureau of Investigation, South Bengal (Headquarters) & Ors.

Mr. Ankit Kanodia
Ms. MEghna Agarwal
... for the appellants

Mr. A. Ray, GP
Mr. Md. T.M.Siddiqui, AGP
Mr. T. Chakraborty
Mr. S. Sanyal
... for the State

1. This intra Court appeal is directed against the order dated 25th September, 2023 passed in WPA 22423 of 2023.

2. The appellant had filed the writ petition challenging the order passed by the appellate authority under the provisions of the WBGST Act on the ground that the appellate tribunal is yet to be constituted and, therefore, the appellant has no other alternative remedy except to approach the learned writ Court.

3. The learned Single Bench by the impugned order directed the appellant to pay 20% of the

disputed tax for being entitled to stay of the balance amount of demand of tax, penalty and interest etc.

4. Aggrieved by the said order the appellant has preferred this appeal.

5. Mr. Ankit Kanodia, learned Advocate appearing for the appellant has made elaborate submissions with regard to whether the appellant can be compelled to pay 20% of the disputed tax for grant of stay when the tribunal has not been formed by the Government. In this regard he referred to a circular issued by the department as well as the decision of the High Court of Himachal Pradesh in M/s. V*ardhaman Ispat Udyog vs. State of Himachal Pradesh & Ors. (CMPMO No. 447 of 2023* dated 18.08.2023) rendered by a learned Single Bench which took note of the decision of the High Court of Bombay in the case of *Rochem India Pvt. Ltd. vs. Union of India & Ors. in WP No. 10883 of 2019* dated 08.02.2023.

6. In our considered view, the order directing payment of 20% of the disputed tax passed by the learned Single Bench appear to be a discretionary order and it should not be treated to be an order in the sense of a pre-deposit as provided for under the Act. In the event an appeal is preferred before

the tribunal by an aggrieved assessee. Therefore, we find no error in the exercise of the discretion by the learned Single Bench in directing remittance of a portion of the disputed tax for being entitled to grant of stay. With regard to the legal issue as to whether at all the appellant should be directed to pay any amount as a condition for grant of say is an issue which can always be agitated in the writ petition. Therefore, the said issue is left open and it is open to the appellant to canvass all points in the writ petition.

7. We take note of the submission of the learned counsel for the appellant that the appellant has already paid 10% of the disputed tax has been recovered from the appellant.

8. In the light of the same, for the purpose of granting an order of stay, we exercise discretion and direct the appellant to pay further amount of 10% of the disputed tax and such payment shall be without prejudice to the rights and contention of the appellant in writ petition.

9. The appellant is directed to make further payment of 10% of the disputed tax within three weeks from date of receipt of server copy of this order.

10. With The aforesaid direction, the appeal being MAT 1997 of 2023 and the connected application being CAN 1 of 2023 are disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYA, J.)