22.12.2023
Item No.14
gd/ssd

MAT/2387/2023
IA NO: CAN/1/2023
JMT GLOBAL CARGO SERVICE AND ANR.
VS
THE ASSISTANT COMMISSIONER,
CGST AND CX, SHIBPUR DIVISION AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Mr. K.K. Maiti,
Mr. Tapan Bhanja
..for the CGST Authorities.

Ms. Sanjukta Gupta
..for the Union of India.

1. This intra court appeal by the writ petitioners is directed against the order dated 05.12.2023 in WPA 26686 of 2023 by which the appellants had challenged an order passed by the Assistant Commissioner, CGST & CX, Shibpur Division, Howrah Commissionerate dated 24.05.2022. By the said order the adjudicating authority confirmed the demand of service tax amounting to Rs.10,84,604/- and imposed equal amount of penalty and also levied interest.

2. It is not in dispute that the entire service tax along with penalty and interest totaling a sum of Rs.24,11,506/- have been recovered from the

appellants on 20.11.2023 by way of debiting the appellants' bank account.

3. The appellants filed the writ petition challenging the order in original dated 24.05.2022 on the ground that opportunity was not granted and certain reasons have been set out as to how notice was not served at the correct address of the appellants.

4. In the order dated 24.05.2022 the Assistant Commissioner has specifically recorded that notices were sent to the appellants through speed post and personal hearing was fixed on 28th March, 2022, 12th May, 2022 and 19th May, 2022, but none appeared.

5. The appellants seek to explain the absence by stating that non-receipt of notice and also the sickness of one of the partners of the appellants who is none other than the mother of the managing partner.

6. Under normal circumstances, the court would not have entertained the plea raised by the appellants since the appellants were not diligent in prosecuting the matter and despite notices they have not responded to the authority and put forth their case. However, two factors which have weighed in our mind to grant relief to the appellants are firstly, the basis for issuing the show cause-cum-demand notice dated 28.12.2020 is on account of the fact that the adjudicating authority reconciled the ST 3 Return of the appellants and the income tax return and found

mismatch and consequently proceeded to issue the show cause notice proposing to assess the service tax on the entire amount. The assessees' case is that there are two components to be amounts which are chargeable to the customers one is the freight which is reimberssable and the remaining is the commission or the service charges payable to the appellants as a Cargo Handling Service Agent. However, this fact needs to be explained by producing appropriate records which the appellants have failed to do so. The second aspect which has weighed in our mind that as of now the entire tax and penalty and interest have been fully recovered.

7. Therefore, we are of the view that one more opportunity can be granted to the appellants to put forth their case and agitate the matter on merits.

8. For the above reasons, the appeal as well as the writ petition stands disposed of by directing the appellants to treat the adjudication order dated 24.05.2022 as a show cause notice and submit their reply along with documents within 15 days from the date of receipt of the server copy of this order.

9. Thereafter the appellants shall be granted one opportunity of personal hearing which shall be availed by the appellants and no adjournment will be entertained.

10. Thereafter the adjudicating authority after considering the submissions both oral and written and the documents that the appellants may produce, pass fresh orders on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)