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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/54/2023
IA NO: GA/1/2023
M/S. HARSH POLYFABRIC PRIVATE LIMITED
VS.
UNION OF INDIA & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 28th February, 2023

Appearance :
Mr. Rahul Tangri, Adv.
Mr. Dipankar Majumder, Adv.
…for appellant

Mr. Debasish Ghosh, Adv.
Mr. Nilotpal Chatterjee, Adv.
…for State

The Court : - This intra-court appeal filed by the writ petitioner is directed against the order dated 13th January, 2023 in WPO 235 of 2021. The said writ petition was filed by the appellant challenging an order passed by the appellate authority under the provisions of the West Bengal Goods and Service Tax Act and the Rules framed thereunder, dated 10th March, 2021.

The issue involved in the matter is with regard to the classification of the product dealt by the appellant. The learned Single Bench by the impugned order held that in exercise of jurisdiction under Article 226 of the Constitution of

India, a Writ Court cannot scrutinise the composition and mode of manufacture of a product like that dealt by the appellant and it cannot do the job of classifying the product as to under which classification list of the Customs Tariff Act such product falls since it requires scientific and technical analysis to be conducted by experts in such scientific and technical field. Thus, the learned Writ Court was of the view that the writ petition cannot be entertained as against the order passed by the appellate authority dated 10th March, 2021. While dismissing the writ petition the learned Single Bench observed that considering the prayer made by the appellant after the order was passed, liberty was granted to the appellant to raise all issues raised in the writ petition in future before the appellate forum or tribunal when it will be available.

Aggrieved by such order, the appellant has filed the present appeal.

We have heard Mr. Rahul Tangri, learned counsel appearing for the appellant and Mr. Debasish Ghosh, learned Counsel for the respondent State.

At the first blush, on going through the order passed by the learned Writ Court, we get an impression that the conclusion arrived at by the learned Writ Court was perfectly justified. We say so because in exercise of jurisdiction under Article 226 of the Constitution of India, under normal circumstances disputed questions of fact will not be adjudicated. This normal principle is applied in writ proceedings thereby directing the aggrieved person to avail the remedies available under the relevant statue either by way of an appeal to the appellate authority or to the tribunal etc. However, in the case on hand, a slight departure is required to be made while applying the normal principle which is being applied while considering a challenge to a classification dispute. This is so because as against the order dated 10th March, 2021 impugned in the writ petition, the appellant though has an effective alternative remedy by way of an appeal to the GST Tribunal, till date Tribunal has not been constituted in the State of West Bengal.

In such circumstances, the appellant cannot be left without any remedy and therefore, in the given facts and circumstances of the case, a writ petition was maintainable and is maintainable.

The writ petition is of the year 2021 and we find that the pleadings are complete and the writ petition was required to be heard and decided on merits. However, since the learned Single Bench dismissed the writ petition on the ground that the dispute raised by the appellant cannot be adjudicated in a writ petition and should be done before an appropriate forum, we are constrained to observe that in the absence of any other alternative remedy available to the appellant, there is no other option for the learned Writ Court except to decide the issue on merits and in accordance with law.

The learned counsel for the appellant submitted that he may be permitted to make submission on the merits of the matter before this Court and a decision can be arrived at.

We are unable to persuade ourselves to agree to the said submission for the simple reason that the correctness of the order passed in the writ petition alone can be decided in an intra-court appeal and under normal circumstances we are not required to examine the correctness of the order which was impugned in the writ petition, more so, when the learned Writ Court has not given any finding as to the correctness or otherwise of the order impugned before it.

Therefore, necessarily the appellant has to go back to the learned Writ Court and make submissions on merits and therefore the writ petition could be decided.

For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside and the writ petition is restored to the file of the learned Writ Court with a request to the learned Writ Court to decide the matter on merits and in accordance with law as the appellant has no other alternative remedy against the order impugned in the writ petition as on date since the GST Tribunal is yet to be constituted in the State of West Bengal.

Since the writ petition is of the year 2021, we give liberty to the learned Counsel for the appellant to pray for early listing of the writ petition.

With the aforesaid direction, the appeal is allowed.

The stay application being IA No:GA 1/2023 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/SN.