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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CEXA/8/2023
IA NO.GA/1/2023

BANKURA MUNICIPALITY

-Versus-

COMMISSIONER OF CGST AND CX
BOLPUR COMMISSIONERATE AND ORS.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2023

Appearance :
Ms. Sukanya Dutta, Adv.
...for the appellant.

Mr. K.K. Maity, Adv.
...for the respondent.

The Court : This appeal filed by the Bankura Municipality under Section 35G of the Central Excise Act, 1944 is directed against the order dated 19th June, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zone Bench, Kolkata (Tribunal) in Appeal Case No.75271/2023.

The appeal has raised the following substantial questions of law for consideration :

"*(i) Whether the Hon'ble Tribunal is justified in passing the impugned order without going into the merit of the case and dismissed the appeal on the ground that the* *appeal filed before the Respondent No.4 beyond the period of limitation?*

(ii) Whether on the facts and circumstances, the Hon'ble Tribunal has ceased the right of your petitioner to get legitimate relief which involves a wide range of legal interpretations as well as involves the same question of law for the previous and subsequent assessment years, for which the same elucidation is involved, is not beyond the principle of natural justice?

We have heard Mr. K.K. Maity, learned counsel appearing for the respondent.

The appellant municipality is aggrieved by the order passed by the learned Tribunal dated 19.06.2023 by which the Tribunal affirmed the order passed by the Commissioner of Appeals dismissing the appeal filed by the appellant on the ground it is time barred. The appellant has filed the appeal before the Commissioner of Appeals challenging an order of adjudication dated 24.8.2016 by which part of the demand raised in the show cause notice was affirmed and the remaining demand was dropped. Identical impugned order was subject matter of challenge by the appellant in CEXA/9/2023 and by judgment and order dated 13.12.2023, this Court taking note of the peculiar facts and circumstances of the case have allowed the appeal and directed the appeal to be heard and decided on merits by the Commissioner of Appeals. The operative part of the judgment and order reads as follows :

"*xxxx xxxx xxxx xxxx*

Under normal circumstances this Court would not exercise any discretion in the matter on account of clear statutory mandate for fixing time limit for preferring an appeal before the Commissioner of Appeals. However, considering the fact that the appellant is a local authority and the issues which have been the subject matter of adjudication before the authority culminating in an order dated 24th August, 2017 are all recurring issues, the appellant, in our opinion, should be granted one opportunity to agitate their contentions so that a decision on merits is arrived at rather non-suiting the appellant municipality on a technical ground. This discretion cannot be exercised in all cases and this Court is of the view that the case on hand is a rare case where the municipality is contesting demand raised by the Service Tax Commissionerate. That apart, in all probabilities the appellant would have complied with the pre-deposit condition while preferring the appeal before the learned Tribunal. As mentioned earlier, the appellant municipality had effectively contested the show cause notice by submitting a detailed reply producing documents and also availing the opportunity of personal hearing. Therefore, it cannot be stated to be a case where the appellant municipality was not diligent of their rights nor they had failed to prosecute the matter with sincerity. Therefore, we consider the facts of the case to be very peculiar which persuades us to exercise certain discretion in the matter.

For the above reasons, the appeal is allowed and the order passed by the learned Tribunal as well as the order passed by the Commissioner of Appeals is set set aside and the appeal stands restored to the file of the Commissioner of Appeals, Siliguri and the appeal be taken up after affording an opportunity of personal hearing to the authorised representative of the appellant municipality and an order be passed on merits and in accordance with law.

We make it clear that this judgment and order shall not be treated as a precedent. Consequently, the substantial questions of law are left open.

It is made clear that the appellant municipality should co-operate with the expeditious disposal of the appeal by the Commissioner of Appeals and no unnecessary adjournment should be sought for."

Thus, following the above decision, the appeal is allowed and the order passed by the learned Tribunal as well as the order of adjudication are set aside and the appeal stands restored to the file of the Commissioner of Appeals, Bankura and the appeal be taken up after affording an opportunity of personal hearing to the authorised representative of the appellant municipality and an order be passed on merits and in accordance with law.

We make it clear that this judgment and order shall not be treated as a precedent. Consequently, the substantial questions of law are left open.

It is made clear that the appellant municipality should co-operate with the expeditious disposal of the appeal by the Commissioner of Appeals and no unnecessary adjournment should be sought for.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

S. Das/