09 06.02.2024
Ct. No. 01
AN

MAT 90 of 2024
with
IA No. CAN 1 of 2024

M/s. KALEIDOSCOPE
Vs.
State of West Bengal & ors.

Ms. Sweta Mukherjee
... for the appellant

Mr. A. Ray, ld. G.P.
Mr. T. M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
... for the State respondent

1. We have heard learned counsel for the parties present.

2. This intra-court appeal filed by the writ petitioner is directed against the order dated 09.01.2024 passed in WPA 29214 of 2023. The writ petition was dismissed on the ground that there are disputed questions of fact. Aggrieved by such order, the appellant has preferred the present appeal.

3. It is submitted that a show cause notice was issued to the appellant under Section 74(1) of the WBGST Act, 2019 read with Rule 142(1) of the WBGST Rules, 2017. In the summary of the show cause notice, the total tax payable has been computed at Rs. 92,44,628/-. It is not in dispute that the appellant within the time permitted by the Department has uploaded their reply to the show cause notice. However, on and from 20.12.2023, as many as 13 provisional orders have been passed in FORM GST DRC 22 attaching all the bank accounts, the entire business

activities of the appellant has come to a stand still and, therefore, prays for an appropriate direction so that the appellant should be permitted to operate the said bank accounts.

4. Considering the fact that the show cause notice dated 06.12.2023 is yet to be adjudicated, we are of the view that an order of provisional attachment that too 13 in number by attaching all the bank accounts of the appellant is very harsh, more particularly, when there is no material on record to indicate that there is an attempt made by the appellant to evade the payment of tax. That apart, the tax and interest which is payable is yet to be adjudicated as the matter is still in the stage of the show cause notice. Therefore, at this juncture, the orders of provisional attachment of all the bank accounts of the appellant cannot be sustained.

5. For the reasons given hereinabove, the appeal stands **allowed**. The order passed in the writ petition is set aside and the writ petition stands allowed. All the provisional attachment orders issued in FORM GST DRC 22 are set aside and the appellant shall be entitled to operate all the bank accounts and carry on business activities and also simultaneously requisite taxes. The respondent authorities are directed to commence and complete the adjudication of the show cause notice within a period of three weeks from the date on which the server copy of this order is received by the Department.

6. It is, however, made clear that this Court has

not gone into the merits of the matter and it is upto the adjudicating authority to consider all the facts placed by the appellant and also take note of the legal position and to proceed on merits and in accordance with law.

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

**(T. S. Sivagnanam)**
**Chief Justice**

**(Supratim Bhattacharya, J.)**