05.03.2024
Item No.11
RP
Ct. No.1

FMA 348 of 2023
with
IA No.CAN 1 of 2023

Rajesh Bhatia
Vs.
Superintendent of CGST & CX, Range-II, Dankuni Division, Howrah Commissionerate & Ors.

Mr. Somnath Ganguli
Mr. Sandip Choraria
Mr. Sukalpa Seal
Ms. Priyamvada Singh
.....for the Appellant
Mr. Bhaskar Prosad Banerjee
Mr. Abhradip Maity
......for Respondent CGST & CX

1. This appeal is directed against the order dated 15th December, 2022 by which the writ petition filed by the appellant challenging an order of adjudication dated 31.03.2022 passed by the Joint Commissioner of Howrah CGST & CX Committee was dismissed. Admittedly, as against the said order an appeal lies before the Commissioner of Appeal on payment of 7.5% of the duty demanded where duty and penalty are in dispute or penalty alone is in dispute under Section 35 of the Central Excise Act, 1944. Learned Single Bench was not inclined to entertain the writ petition as it has been filed much beyond the period of limitation of 60 days

prescribed for filing the statutory appeal before the Commissionerate of Appeal.

2. Learned advocate for the appellant would strenuously contend that the adjudicating authority failed to properly appreciate the scope of notification no.25/2012 Service Tax dated 20th June, 2012 and it is the definite case of the appellant that they are only supplying trucks to the goods transport agency. This aspect of the matter is purely factual which has to be substantiated by the assessee by producing necessary records and the same cannot be decided in a writ petition based on affidavits. However, considering the quantum of service tax demanded, we are of the view that an opportunity can be granted to the appellant to file an appeal before the statutory appellate authority, namely, the Commissioner of Appeal subject to compliance of pre-deposit condition.

3. For the above reasons, challenge to the adjudication order dated 31.03.2023 is not entertained on the technical ground though the appellant should avail alternate appellate remedy which is not only efficacious but effective as well. In the result, the appeal and the connected application stand **disposed of** by directing the appellant to file a statutory appeal before the

Commissioner of Appeal on compliance of pre-deposit condition and if such appeal is filed within 60 days from the date of receipt of the server copy of this order, the appellate authority shall take up the appeal on merits without referring to the point of limitation and decide the same in accordance with law after affording an opportunity of personal hearing to the authorized representative of the appellant.

4. We make it clear that we have not gone into the merit of the matter and it is well open to the appellate authority to deal with all issues, which are to be canvassed by the appellant in the appeal to be filed before the appellate authority in terms of the above direction.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)