

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 16.07.2024
DELIVERED ON: 16.07.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA
F.M.A. 557 of 2024
With
IA No. CAN 1 of 2024
M/s. Diamond Timber Industries
Versus
Union of India & Ors.

Appearance:-

Mr. Sandip Choraria

.....For the Appellant

Mr. P. K. Bhowmick

.....For the Union of India

Mr. K. K. Maiti

Mr. Tapan Bhanja

Mr. Saurov Mallick

.....For the Respondent No.3

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioner is filed challenging the order dated 13th February, 2024, by which the writ petition filed challenging an adjudication order dated 23rd February, 2023 was dismissed on the ground of availability of alternate remedy.
2. The learned advocate for the appellant would strenuously contend that the reply given by the appellant to the show-cause notice was delayed by a period of about two days and the authority without considering the same has taken a decision in the matter and disallowed the two components of the ITC claimed by the appellant.

3. The adjudicating authority in its order has recorded the reasons as to why he cannot extend the time and has referred to an order passed by the Hon'ble Supreme Court, wherein a deadline has already been fixed.
4. Therefore, the stand taken by the authority cannot be faulted. In any event, the appellant would be entitled to contest the matter on merits by filing a statutory appeal. However, the learned Single Bench has not given any opportunity to the appellant to do so.
5. In our view, since the appeal is a statutory right, we are of the view that the appellant can be granted liberty to file a statutory appeal before the appellate authority challenging the adjudication order dated 23rd February, 2023.
6. Accordingly, the appeal and the connected application (IA No. CAN 1 of 2024) stand dismissed. The appellant is at liberty to file a statutory appeal before the appellate authority challenging the correctness of the adjudication order dated 23rd February, 2023 and if such appeal is filed within a period of three weeks from the date of receipt of server copy of this judgment and order, the appeal shall be entertained without reference to limitation, subject to the appellant complying with the requisite pre-deposit conditions.
7. No costs.
8. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)