13 05.03.2024
AN Ct. No. 01
RP

MAT 565 of 2023
with
IA No. CAN 1 of 2023

Ardhendu Bikash Das, proprietor of M/s. Ardhendu Bikash Das
Vs.
Joint Commissioner of CGST And Central Excise, Haldia Commissionerate & Ors.

Mr. Somnath Ganguli
Mr. Sandip Choraria
Mr. Sukalpa Seal
Ms. Priyamvada Singh
... For the Appellant
Mr. Shiv Shankar Banerjee
Mr. K. K. Maiti

... For the Respondent CGST

Mr. Debasish Saha
... For the SBI

1. We have heard learned counsel for all the parties elaborately.

2. This intra-Court appeal by the writ petitioner challenges the order dismissing the writ petition filed challenging the adjudication order dated 30.03.2022. From time to time various interim directions were issued by this Court and in one such direction, the appellant was directed to pay a sum of Rs. 25 lacs to be entitled for lifting of the bank account of the appellant. Subsequently, it was brought to the notice of the Court that by way of bank attachment, the respondent Department has recovered a sum of Rs. 3,98,09,291.85/-. Therefore, the direction issued to deposit a sum of Rs. 25 lacs was deleted by interim order dated 11.08.2023.

3. After hearing learned counsel for the respective parties and perusing the materials on record, we are of the opinion that a lot of issues are factual. More particularly, the modus adopted by the appellant assessee while depositing certain sums of money under the pretext to pay taxes while simultaneously filing nil tax returns. These intricate issues have to be adjudicated before the appellate authority and in a writ petition and the same cannot be decided based on affidavits. Therefore, we are of the view that the appellant cannot bypass the statutory appellate remedy.

4. Learned counsel for the appellant submitted that the order of adjudication dated 30;.03.2022 has not been served on the appellant. This contention is disputed by the learned counsel appearing for the respondent and it is submitted that before the learned Single Judge the Department has established that the adjudication order was sent and it was received by the appellant assessee on 06.04.2022 and the track report of the said effect was produced before the Court. Be that as it may, since the appellant should not be put in a disadvantageous position of not getting a remedy to adjudicate the disputes on merits, we are of the view that the appellant can be granted liberty to file an appeal by treating the photocopy of the adjudication order dated 30.03.2022 as the true/certified copy of the order so as to enable the appellant to prefer the appeal. If the appeal is presented within a period of two months from the date of receipt of the server copy of this

order, the appellate authority shall entertain the appeal without any reference to limitation.

5. We further make it clear that the merits of the matter have not been gone into and it will be well open to the appellant to canvas all points before the appellate forum.

6. In the result, the appeal stands **disposed of**. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam)
(Chief Justice)

(Hiranmay Bhattacharyya, J.)