09.04.2024
Item No.10
gd/ssd

MAT/557/2024
IA NO: CAN/1/2024
M/S KANAK TIMBER HOUSE AND ANR.
VS
THE ASSISTANT COMMISSIONER OF STATE TAX BUREAU OF INVESTIGATION (S.B.) DURGAPUR ZONE AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal
..for the State.

1. This intra court appeal by the writ petitioners is directed against an interim order dated 11.03.2024 passed in WPA 4729 of 2024.

2. By the said writ petition the appellants contended that by operation of law the seized goods can no longer be retained by the respondents and has to be returned to the appellants by referring to Section 67(7) of the CGST/WBGST Act, 2017 (hereinafter referred to as the said Act).

3. It has been vehemently contended by the learned advocate for the appellants that the language of sub-section (7) of Section 67 is amply clear by mentioning that where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods

shall be returned to the person from whose possession they were seized. Further, it is submitted that in terms of the proviso the period of six months may be extended for a further period not exceeding six months on sufficient cause being shown by the proper officer.

3. Therefore, it is submitted that the goods have to be returned to the petitioners. It is submitted that in the instant case the seizure was effected on 25.03.2023 and the show cause notice was issued on 26.12.2023 well beyond the period of six months and the proviso under sub-section (7) of Section 67 was not involved and the time was not extended and, therefore, by operation of law the seized goods have to be returned.

4. The learned Single Bench dismissed the writ petition on the ground that the appellants have not approached the respondent no.1 for release of the goods under sub-section (6) of Section 67 of the Act and faulted the appellants for not doing so declined the relief sought for and disposed of the writ petition by observing that if an application is made by the writ petitioners with the respondent no.1 in terms of Section 67(6) of the Act, the same shall be considered in accordance with law.

5. *De hors* the finding recorded by the learned Single Bench, we are of the view that the appellants are not entitled for any relief more particularly on account of the earlier conduct of the appellants.

6. Biswas Timber Mart and Others filed a writ petition in WPA 17991 of 2023 stating that the respondent authorities have not considered the series of representations made by them and the last of which was made on 15th July, 2023 for release of the stock in question and the details of the grievance are clearly spelt out in the representation.

7. The learned Single Bench by the order dated 08.08.2023 disposed of the writ petition by directing the respondent authorities to consider and dispose of the representation dated 15th July, 2023 in accordance with law by passing a reasoned order and after giving an opportunity of hearing to the petitioners or its authorised representatives.

8. In compliance thereof, a speaking order has been passed on 01.09.2023 which adverted of certain facts therein in the later paragraph.

9. Admittedly, a single seizure memo was drawn as could be seen from Form GST INS-03 dated 25.03.2023 in which the names of the persons have been given as Tapan Kumar Biswas, Partner & Others of M/s. Kanak Timber House. The description of goods has given in the said Order of Prohibition states "all stock of goods".

10. The contention of the appellants is that the present appellants are distinct and separate entity and has got nothing to do with the prayer made by the other

writ petitioners, namely, Biswas Timber Mart and Others.

11. In order to consider the correctness of the contentions, we have perused the order passed by the authority dated 1st September, 2023 in pursuance to the directions issued in WPA 17991 of 2023 dated 08.08.2023. In the preamble portion of the order the facts have been recorded in which a finding has been recorded that the present appellants failed to differentiate the stock of timber belonging to them out of the total stock of timber in the business premises; they failed to differentiate the stock of timber belonging to Biswas Timber Mart (one of the petitioners in WPA 17991 of 2023) out of the total stock of timber in the business premises of M/s. Kanak Timber House with valid documents and failed to provide any valid documents which proves that the individual stock of timbers of Swapan Kumar Biswas and Tapan Kumar Biswas have been carrying forward since the time of transfer of the assets i.e. 2010 and M/s. Kanak Timber House could not even prove with supporting evidence that any stock of timbers ever belonged to any individual even their father.

12. However, we do not wish to comment the correctness of the order dated 1st September, 2023 passed by the Assistant Commissioner of State Tax since the aggrieved persons are entitled to challenge the

said order in terms of the provisions of the Act. Even going by the order passed in the writ petition dated 08.08.2023 it is seen that there have been several claims for release of the same stock of timber and these requests have been made much prior to the expiry of six months period from the date of seizure.

13. Thus, on account of the conduct of the appellants, the appellants are not entitled to any relief in this appeal.

14. Accordingly, the same stands dismissed.

15. There will be no other as to costs.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)