Form No. J.(2)
Item No.3

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

HEARD ON: 16.04.2024
DELIVERED ON: 16.04.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 663 of 2024
With
I.A. No. CAN 1 of 2024

K. Seshagiri Rao & Co.
Vs.
Union of India & Ors.

Appearance:-
Mr. Rishi Raju
Mr. G. R.S. Akhileswar
Mrs. Shreya Mundhra

.........for the Appellant

Mr. Tapan Bhanja

.........for the respondents

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 2nd April, 2024 by which the writ petition filed by the appellant challenging an order in original passed by the adjudicating authority dated 8th December, 2023 was disposed of by directing the appellant to avail the statutory remedy.

2. We have elaborately heard the learned advocate appearing for the appellant and the learned Senior Standing counsel for the respondents.

3. As could be seen from the adjudication order, the authority has given certain reasons after taking note of the reply given by the assessee to the show-cause notice. Unfortunately, the assessee did not avail the opportunity of personal hearing.

4. After perusing the material documents placed in this appeal, we find that to appreciate the contentions, which have been raised in this appeal as well as in the writ petition, a full-fledged adjudication into the factual position is required. Such exercise cannot be done in a writ petition under Article 226 of the Constitution of India, where the Court has to decide the matter based on affidavits.

5. That apart, the appellant has got an effective alternate remedy in terms of Section 107(1) of the GST Act, 2017 before the Commissioner (Appeals). The appellate authority will be entitled to appreciate and re-appreciate the factual position and take a decision in the matter. Merely because the appellant will have to comply with the pre-deposit condition will not render the appellate remedy as ineffective or illusory.

6. Therefore, the appellant has to avail the appellate remedy available under the Act.

7. For the above reasons, we find no ground to interfere with the order passed by the learned Single Bench and the appeal along with the connected application (CAN 1 of 2024) stand dismissed.

8. The appellant is granted 30 days time to file the appeal from the date of receipt of server copy of this order and if the appeal is filed, the

Commissioner (Appeals) shall entertain the appeal without rejecting the same on the ground of limitation.

9. So far as the pre-deposit condition is concerned, it will be open to the appellant to plead before the authority that they have already paid the taxes and they should not be further burdened to pay 10% of the disputed tax as quantified in the adjudication order. If such prayer is made, the appellate authority shall also consider the same.

10. No costs.

11. 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.)

Pallab/KS AR(Ct.)