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

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

HEARD ON: 14.05.2024

DELIVERED ON: 14.05.2024

CORAM:

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

M.A.T. 670 of 2024

Jyoti Commotrade Private Limited
Vs.
Assistant Commissioner of State Tax, Salt Lake Charge & Ors.

Appearance:-
Mr. Rajarshi Chatterjee
.........for the appellant

Mr. Anirban Ray, Ld. G.P.
Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
..........for the State

JUDGMENT

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

1. This intra-Court appeal, though directed against an interim order, at the request of the learned counsel for the appellant/writ petitioner, the appeal as well as the writ petition is taken up for consideration.
2. In the writ petition, essentially there were two prayers, one is challenging the vires of Section 16(2)(c) of the Central Act and the other of CGST/WBGST Act and the other is to set aside the order of adjudication dated 18th April, 2023 passed by the Charge Officer, Salt Lake Charge.

3. The learned advocate appearing for the appellant submitted that the appellant is not pursuing the prayer for challenging the vires of Section 16(2)(c) of the Act and this submission is placed on record and the writ petition challenging the said enactment is dismissed. With regard to the challenge to the adjudication order dated 18th April, 2023 is concerned, the learned advocate for the appellant/writ petitioner would place reliance on the decision of this Court in ***Suncraft Energy (P.) Ltd. Vs. Assistant Commissioner, State Tax*** reported in ***[2023] 153 taxmann.com 81 (Calcutta)***. In the said decision, the Court has considered a somewhat similar circumstances and issued direction setting aside the order of adjudication and directing the assessing officer to proceed against the respondent no.4 therein, who was the selling dealer. However, in paragraph 9, the exceptional cases have been set out, where there has been collusion or fraud and/or that the selling dealer himself has closed down the business. In the case on hand, the allegation is that the selling dealer has obtained registration by playing fraud and making wilful misstatement and suppression of fact. If that be so, this being the factual position, the appellant should not bye-pass the appellate remedy available under the Act.
4. Before the appellate authority, the appellant/writ petitioner would be able to place records to show that they have paid the taxes and on the date when the invoice was raised, the registration of the selling dealer was valid.
5. Therefore, the challenge to the order of adjudication dated 18th April, 2023 cannot be entertained by way of a writ petition as the appellant/writ petitioner has to avail the statutory appellate remedy available under the Act.
6. For the above reasons, while dismissing the writ petition as well as the appeal challenging the validity of Section 16(2)(c) of the Act, the appellant is directed to file an appeal before the appellate authority and if such an appeal is filed within a

period of 30 days from the date of receipt of server copy of this judgment and order after making the mandatory pre-deposit, the appellate authority shall entertain the appeal, afford an opportunity of personal hearing to the appellant/writ petitioner and decide the appeal on merits and in accordance with law.

7. The appellant is at liberty to seek for interim order before the appellate authority with regard to the freezing of the electronic credit ledger of the appellant.
8. No costs.
9. 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.)