**Form No. J.(2)**
**Item No.5**

**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. 718 of 2024**
**With**
**I.A. No. CAN 1 of 2024**

**M/s. Indorama India Private Limited**
**Vs.**
**Union of India & Ors.**

**Appearance:-**
**Mr. J. P. Khaitan, Sr. Adv.**
**Mr. Agnibesh Sengupta**
**Ms. Taniya Roy**
**.........for the Appellant**

**Mr. Samarjit Roy Chowdhury**
**Ms. Smita Das De**
**.........for the U.O.I.**

**Mr. K. K. Maiti**
**Ms. Ekta Sinha**
**.....for the C.G.S.T. Authority**

**<u>JUDGMENT</u>**

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

1. This intra-Court appeal by the writ petitioner is directed against an interim order dated 2nd April, 2024 passed in two writ petitions filed by the appellant. The first writ petition in W.P.A. 5780 of 2024 was filed challenging the show-cause notice dated 31st January, 2024 largely on the

ground that it is without jurisdiction. Apart from that, other grounds have been raised contending that the authority proceeded to act in violation of the principles of natural justice.

2. When the first writ petition was pending, it appears that the appellant sought for time before the authority not to proceed with the adjudication of the show-cause notice but that request appears to have not been acceded too and adjudication order has been passed. This was the subject-matter of challenge in W.P.A. 8133 of 2024.

3. The show-cause notice dated 31st January, 2024 has directed the appellant to show-cause as to why the refunds of input tax credit should not be reversed. In such circumstances, when challenge is to the jurisdiction of the authority to issue the show-cause notice, it will be inequitable to insist upon the appellant/writ petitioner to make a pre-deposit.

4. The learned senior Standing Counsel appearing for the respondents would strenuously contend that the learned Single Bench had made an observation that a deposit of 10% of the disputed amount should be made to which the appellant/assessee did not agree and the Court should direct the appellant to deposit the amount since they have not availed the alternate appellate remedy available under the C.G.S.T. Act, 2017 under Section 107(1) of the said Act challenging the order in original dated 7th March, 2024.

5. This submission made on behalf of the respondent authorities could have been considered, had the appellant not challenged the show-cause notice at the first instance on the ground that the authority lacks jurisdiction to do

so and the order of adjudication has been passed during the pendency of the first writ petition viz. W.P.A. 5780 of 2024.

6. Thus, considering the peculiar factual matrix of the instant case, the Court is of the view that the authority should not initiate any coercive action in recovering the demand, which was confirmed in the order in original dated 7th March, 2024 till the writ petitions are heard and disposed of.

7. Accordingly, the appeal along with the connected application (I.A. No. CAN 1 of 2024) stand allowed with the above directions and the respondents shall not initiate any coercive action, as mentioned above.

8. The respondents/Department are directed to file their affidavit-in-opposition in both the writ petitions within two weeks from date, reply thereto, if any, be filed within a week thereafter.

9. Let the writ petitions be listed before the appropriate bench in the week commencing 13th May, 2024.

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.)