14.05.2024
Item No.6
gd/ssd

MAT/798/2024
IA NO: CAN/1/2024
U.B.S. EXPORTS INTERNATIONAL PRIVATE LIMITED AND ANR.
VS
STATE OF WEST BENGAL AND ORS.

Mr. Pranit Bag,
Ms. Rita Mukherjee,
Mr. Ghanshyam Jha,
Mr. Rowsan Kumar Jha
..for the Appellants.

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

1. This intra court appeal by the writ petitioners is directed against the order passed by the learned Single Bench declining to grant any interim order and directing affidavit-in-opposition to be filed in the writ petition.

2. The said writ petition was filed challenging an order passed by the appellate authority which affirmed the order passed by the adjudicating authority.

3. The contention of the learned advocate appearing for the appellants is that the writ petition was filed before the learned Single Bench on the ground that the GST tribunal has yet to be constituted and had the appellants filed an appeal before the tribunal all that is required was a 20% mandatory pre-deposit and the appellants would be entitled to grant an interim order from further recovery.

4. It is a submission that as on date the department has recovered a sum of Rs.86,39,418/- which is far more than 20% mandatory pre-deposit required to be made if an appeal is preferred to the tribunal.

5. It may be true that under the statute the aggrieved person who approaches the tribunal would be entitled to make a prayer for stay subject to payment of 20% of the disputed tax.

6. In the instant case, it appears to be not in dispute that more than 20% has been recovered, nonetheless the writ petition has been filed before this court and that has been entertained on the ground that the tribunal is not functional.

7. While considering the prayer for interim order, the court is not bound by the statutory principle which would be made applicable to the tribunal.

8. In the event an appeal is filed to the tribunal and such principle can at best have a persuasive effect for the court to consider as to the nature of interim order that has to be passed in a pending disposal of the writ petition.

9. The learned Government counsel pointed out that the false averment has been made in the stay petition in this appeal wherein in paragraph 17 it has been stated that the appellants do not have knowledge about what was written by Eastern Traders.

10. In the facts and circumstances of this case, the appellants could not have taken such a stand more particularly because the 2^{nd} appellant, Uttam Kumar Bagaria is one of the partners of the partnership firm/ Eastern Traders.

11. The learned Government counsel has also produced a tabulated format given details of the various writ petitions which have been filed both by the first appellant company, the partnership firm and the individual partner/Directors, therefore, this averment appears to be a false averment.

12. In any event, we are of the view that the court considered the facts and circumstances and declined to exercise any discretion in granting an interim order and we find that no grounds have been made to interfere with the said order passed by the learned Single Bench.

13. Accordingly, the appeal is dismissed.

14. The respondent authorities are directed to file their affidavit-in-opposition in the writ petition not later than 14^{th} June, 2024.

15. Let the writ petition be listed before the appropriate Bench in the week commencing 17^{th} June, 2024.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)