Form No. J.(2)
Item No. 10

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

HEARD ON: 21.05.2024

DELIVERED ON: 21.05.2024

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

M.A.T. 892 of 2024
With
IA No. CAN 1 of 2024
With
I.A. No. CAN 2 of 2024

Biswajit Kundu, Proprietor of
M/s. B.K. Trading
Vs.
The Superintendent of Central Tax Range II
Shibpur Division Howrah
Commissionerate & Ors.

Appearance:-
Mr. Debasish Ghosh
Mr. T.A. Khan
Mr. B. Sengupta ...**for the appellant**

Mr. Prabir Kr. Bhowmik
Mr. Soumen Bhattacharjee ......**for the Union of India**

Mr. Bhaskar Prosad Banerjee
Mr. Abhradip Maity ......**for the respondent CGST & CX Authority**

JUDGMENT

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

In Re: I.A. No. CAN 1 of 2024

1. We have heard Mr. Debasish Ghosh, learned advocate appearing for the appellants and Mr. Prabir Kr. Bhowmik, learned Government counsel appearing for the Union of India as well as Mr. Bhaskar Prosad Banerjee, learned senior standing counsel for the CGST and CX authority.

2. There is delay of 48 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.

3. I.A. No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

In Re: M.A.T. 892 of 2024

4. This intra-Court appeal by the writ petitioner is directed against the order dated 19th March, 2024 in W.P.A. 4820 of 2024 by which the challenge to the adjudication order dated 16th October, 2023 was rejected directing the appellant to prefer an appeal against the adjudication order.

5. After elaborately hearing the learned advocates for the parties, we find that the adjudicating authority has not caused any verification of the genuineness at the supplier's end. According to the appellant, who is the purchaser, he has the valid tax invoice and taxes have been paid and if the registration of the supplier had been cancelled retrospectively, they should not be penalised and their input tax credit cannot be denied.

6. As rightly pointed out by Mr. Banerjee, learned advocate appearing for the respondent/department, the appellant has to first prove through documents the aspect regarding the movement of goods to establish the genuineness of the transaction. If the same is proved by documentary evidence, then the adjudicating authority can be directed to cause verification at the supplier's end. Without proving the movement of goods, the appellant cannot escape the liability. However, since this aspect of the matter was not properly agitated by the appellant before the authority, we are inclined to grant one more opportunity to the appellant to go before the adjudicating authority to first prove the movement of goods pursuant to the tax invoice, which was issued to the appellant.

7. If the appellant is able to successfully prove the same, then and then only the adjudicating authority should investigate from the supplier's end.

8. For the above reasons, the appeal and the connected application are disposed of by directing the appellant to treat the order in original dated 16th October, 2023 as a show cause notice and submit his reply to the same enclosing documents to prove movement of goods.

9. On receipt of the reply, the adjudicating authority shall consider the said aspect and if to the satisfaction of the authority the aspect of movement of goods has been proved by the appellant, then the adjudicating authority shall cause verification at the supplier's end and proceed to take a decision in accordance with law.

10. However, if the appellant fails to prove the movement of goods, the authorities are entitled to re-affirm the findings recorded in the adjudicating order dated 16th October, 2023

11. Needless to state that the authenticity and veracity of the documents and invoices, which the appellant may produce in terms of the above liberty, shall be scrupulously verified by the adjudicating authority.

12. No costs.

13. 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/Srimanta AR(Ct.)