20.08.2024
Item No.5
gd/ssd

MAT/1185/2024
CONSOLE MANAGEMENT CONSULTANTS PRIVATE LIMITED
VS
THE COMMISSIONER OF CENTRAL TAX, KOLKATA SOUTH COMMISSIONERATE AND ORS.
IA NO: CAN/1/2024

Ms. Anupa Banerjee
..for the Appellant.

Mr. U.S. Bhattacharyya,
Ms. Ekta Sinha
..for the CGST Authorities.

1. This intra court appeal is directed against the order dated 9th April, 2024 in WPA 8576 of 2024 in which the appellant had challenged the adjudication order dated 16th January, 2024.

2. Before the learned writ court and before this court the contention of the appellant is that the show cause notice was not served.

3. It is pointed out by Mr. Bhattahcayya, learned senior standing counsel assisted by Ms. Sinha that the conduct of the assessee should be noted.

4. As could be seen from the adjudication order dated 16th January, 2024 the initial letter pointing out mismatch dated 27.09.2019 was sent by registered post which was returned “unserved”. Thereafter three summons have been issued but the summons also were returned by the Postal Authorities as it could not be served in the registered address. Thereafter two

summons were issued and they were sent through e-mail in the registered e-mail ID and it appears to have been delivered.

5. The assessee in response to the notice of personal hearing initially took a stand by letter requesting time to submit reply to the show cause notice.

6. Subsequently, a personal hearing was fixed in which they appeared on 18.11.2023 and submitted that they did not receive the show cause notice.

7. The learned advocate appearing for the appellant would strenously contend that the show cause notice has been sent by e-mail to the wrong e-mail ID and this was pointed out by the assessee vide letter which was received by the department on 08.11.2023.

8. The issues involved in the instant case is a disputed question of fact which needs to be agitated before the appellate authority as the appellate provision provided under the Act, namely, an appeal to the Commiossioner (Appeals) CGST and CX Kolkata is not only efficacious but also an effective remedy, the appellate authority will be entitled to consider the factual aspects, call for the original adjudication file and thereafter take a decision.

9. Therefore, the learned Single Bench was right in not interfering with the order of adjudication and

relegating the appellant to avail the statutory appellate remedy.

10. Thus, we find no grounds to interfere with the order passed by the learned Single Bench.

11. Accordingly appeal fails and dismissed.

12. The learned advocate appearing for the appellant submitted that the appeallant may be given reasonable opportunity to file the appeal before the statutory appellate authority.

13. The appeallant is permitted to file the appeal within 30 days from the date of receipt of server copy of this order and if the same is done, the appellate authority shall consider the appeal without reference to a limitation.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)