Form No. J.(2)
Item No. 13

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

HEARD ON: 02.07.2024

DELIVERED ON: 02.07.2024

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

M.A.T. 1199 of 2024
With
I.A. No. CAN 1 of 2024

Magma HDI General Insurance Company Limited
Vs.
Union of India & Anr.

Appearance:-
Mr. J.K. Mittal
Mr. Paritosh Sinha
Mr. Amitava Mitra
Ms. Sonia Nandy ....for the appellant

Mr. Uday Shankar Bhattacharya
Mr. Tapan Bhanja ....for the respondents

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order passed by the learned Single Bench declining to grant any interim order in the writ petition viz., W.P.A. 15073 of 2024 on the ground that there are complicated questions of fact, which have to be decided and that can be done only after the affidavits are exchanged.

2. We find that the prayer sought for in the writ petition is challenging the proceedings initiated by the respondent authorities on the ground that it is barred by limitation and in this regard, reference has been made to section 73 (4B) (a) and (b) of the Finance Act, 1994.
3. The learned advocate appearing for the appellant has referred to the circular issued by the CBEC 18th November, 2021, wherein the time limit for adjudication of has been referred to and it is submitted that the Board has issued specific directions that the time limits mentioned in the relevant Act must be adhered to. In support of his contention, the learned advocate for the appellant placed reliance on the decision in the case of **Sunder System Pvt. Ltd. vs. Union of India & Ors.** reported in **2020 (33) GSTL 621(Del.)**.
4. Further, it is contended that the show-cause notice was issued answerable to the Additional Director General (Adjudication) of GST Intelligence, Mumbai. The appellant had filed its reply to the show-cause notice and the said authority at Mumbai had fixed a personal hearing and intimated the same to the appellant by notice dated 23rd November, 2021. Thereafter, the Directorate General of Goods and Services Tax, Intelligence, Chennai Zonal Unit issued a corrigendum dated 25th March, 2022 stating that the words "Additional Director General (Adj.), DGGI. Mumbai Zonal Unit, 3rd Floor, NTC House, 15, N.M. Road, Ballard Estate, Mumbai- 400001" **may be read as** "Principal Commissioner of Central Goods & Services Tax, Kolkata, North, GST Bhavan, 180, Shanti Pally, R.B. Connector, Kolkata-700107."
5. The appellant has questioned as to whether the jurisdiction could be transferred by virtue of a corrigendum. The authority at Kolkata has issued notice dated 5th January, 2024 fixing a date of personal hearing. On receipt of

the same, the appellant had submitted a representation on 1st February, 2024 referring to a writ petition, which was filed by them in W.P.A. 9384 of 2020 challenging the show-cause notice and directed to defer the proceedings. In the said representation, the appellant has also referred to section 73(4)(b) of the Finance Act contending that the adjudication proceeding has already become time barred. This representation, appears to have not been considered and the adjudicating authority at Kolkata issued a notice dated 7th February, 2024 fixing the personal hearing on 20th February, 2024, which appears to have been further postponed to 18th March, 2024. The appellant has also given another representation through its counsel on 18th March, 2024 reiterating its earlier stand and contending that the adjudication process has become time barred. These representations appears to have not been considered and a fresh date of personal hearing was fixed on 24th May, 2024.At this stage, the present writ petition had been filed.

6. Thus, when the appellant has questioned the validity of the adjudication on the ground of limitation, we are of the view that such issue can be adjudicated in a writ petition based on affidavits. Therefore, the respondents/department should file their affidavit in opposition in the writ petition and the writ petition should be heard and decided on merits.

7. In the meantime, if the show-cause notice is adjudicated by the authority, then the entire writ proceedings would become infructuous. Therefore, we are of the view that the adjudication proceedings by the adjudicating authority at Kolkata should be deferred and await the decision in the writ petition.

8. In the result, the appeal is allowed and the order passed in the writ petition by the learned Single Bench is set aside and the respondent/adjudicating

authority at Kolkata is directed to defer the adjudication of the show-cause notice and there will be a direction to the department to file their affidavit in opposition in the writ petition within a period of three weeks from date. Reply, if any, shall be filed within one week thereafter. I.A. No. CAN 1 of 2024 is disposed of.

9. Let the writ petition be listed before the Hon'ble Single Bench during the week commencing 5th August, 2024.

10. It is made clear that it will be well open to the department to raise all grounds in their affidavit in opposition, which will be heard and decided in the writ petition.

11. No costs.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)