

03.04.2024
Item Nos.7-8
gd/ssd

FMA/1039/2023
IA NO: CAN/1/2023
WEST BENGAL INDUSTRIAL
DEVELOPMENT CORPORATION LIMITED
VS
DALMIA CEMENT (BHARAT), LIMITED AND ORS.
with
MAT/1867/2023
IA NO: CAN/1/2023, CAN/2/2023
STATE OF WEST BENGAL AND ORS.
VS
DALMIA CEMENT (BHARAT), LIMITED AND ANR.

Md. T.M. Siddiqui
..for the Appellant in
FMA 1039 of 2023.

Mr. Tanoy Chakraborty,
Ms. Arpita Mondal Adak
..for the Appellants in
MAT 1867 of 2023.

Mr. Abhratosh Majumdar,
Mr. Rajarshi Dutta,
Mr. Rahul Dhanuka,
Mr. Niraj Baheti
..for the Respondents.

1. This intra court appeal by the State is directed against the order dated 27.6.2023 in WPA 13775 of 2023.

2. On going though the impugned order, we find that the learned writ court has recorded that the writ petitioner was entitled to refund of 90% of VAT & CST which was paid by them and despite several requests the appellate authorities were not refunding despite the scheme being in force which was by notification dated September 12, 2014.

3. Therefore, the learned Single Bench had allowed the writ petition and directed disbursal of the entire amount in three installments.

4. Before us the State seeks to argue the matter on merits and contend that the respondent/writ petitioner was not entitled for the refund of 90% of VAT & CST which was paid by them. If that be the case, the appellant should have agitated such an issue before the writ court and we cannot do so in this appeal for the first time.

5. If, according to the appellants, the order impugned suffers from errors apparent on the face of the order, then it is upto them to seek for review of the judgment and order and filing of appeal is not the appropriate remedy.

6. Therefore, we are not inclined to entertain this appeal and the same is accordingly dismissed.

7. However, it will be well open to the appellants to seek for review of the impugned judgment and order, if so advised.

8. The department is directed to return the certified copy of the impugned judgment and order to the learned advocate for the appellant after retaining a Photostat copy.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)