03.09.2024
Item No.2
gd/ssd

MAT/1640/2024
ANIS PATEL
VS
ASSISTANT COMMISSIONER, STATE TAXES AND ORS.
IA NO: CAN/1/2024

Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal,
Mr. Binayak Gupta
..for the Appellant.

Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal,
Mr. D. Sahu
..for the State.

Mr. Kaushik Dey,
Ms. Ekta Sinha
..for CGST Authorities.

1. This intra court appeal by the writ petitioner is directed against the order dated 24th July, 2024 in WPA 12883 of 2024 by which the learned Single Bench dismissed the writ petition.

2. The learned Government counsel would vehemently contend that the learned Single Bench was justified in dismissing the writ petition after noting the relief sought for by the appellant as the appellant did not seek for a Writ of Certiorari but sought for a Writ of Prohibition to restrain the respondents from giving effect to the order dated April 19, 2024 passed by the appellate authority for a period of three months after setting up of the GST Tribunal under Section 110 of the relevant GST Act; for a Writ of Prohibition restraining

the respondents from giving effect to the impugned notice of demand dated April 19, 2024 till the constitution of the tribunal and for a Writ of Prohibition to restrain the respondents from realizing any amount pursuant to the order dated April 19, 2024 passed by the appellate authority and the order of adjudication dated March 31, 2023 till the period of three months from setting up of the GST Tribunal.

3. The objection raised by the learned Government counsel is that the appellant has not sought for issuance of a Writ of Certiorari to quash the order passed by the appellate authority or the adjudicating authority which order has merged with the appellate authority and, therefore, the writ petition was rightly dismissed.

4. First, we take up for consideration this preliminary objection. To be noted that the appellant is not averse in filing an appeal to the tribunal. The appellant cannot be found fault for not being filed such remedy as it is the respondents who are yet to constitute the tribunal.

5. Therefore, for the present the appellant seeks for is to prohibit from giving effect to the order passed by the appellate authority, not indefinitely but for a period of three months after setting up of the GST Tribunal.

6. Therefore, we are of the view that when the appellant is ready and willing to exhaust the appellate remedy available before the tribunal, the appellant is not required to seek for issuance of a Writ of Certiorari to quash the order passed by the appellate authority as the appellant will challenge the order passed by the appellate authority on merits before the tribunal.

7. Hence, considering the nature of the case brought forth by the appellant before the court, we are of the view that the prayer sought for in the writ petition is maintainable. In so far as this appeal is concerned, challenging the order passed by the appellate authority is affirming the penalty imposed by the adjudicating authority. After the tribunal become functional, the appellant would not be required to make any pre-deposit of preferring an appeal before the tribunal and the same position before the first appellate authority.

8. Therefore, for no fault of the appellant the appellant cannot be put on condition nor the authorities can enforce the order passed by the appellate authority affirming the adjudication order imposing penalty till the constitution of the tribunal and the filing of the appeal before the tribunal by the appellant.

9. We are informed that the constitution of the tribunal is in the advance stage and likely to become functional within three months.

10. For the above reasons, the appeal is allowed and the order passed in the writ petition is set aside and the order passed by the appellate authority affirming the order of the adjudicating authority shall remain stayed till the period of three months from the date of constitution of the GST Tribunal.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)