03.09.2024
Item Nos.3-4
gd/ssd

MAT/1641/2024

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

with

MAT/1642/2024
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. These intra court appeals by the writ petitioner are directed against the order dated 24th July, 2024 in WPA 13869 of 2024 and WPA 13876 of 2024.

2. In these writ petitions the appellant sought for a Writ of Prohibition to restrain the respondents from giving effect to the order of appeal dated April 23,

2024 till the period of three months after setting up of the GST Tribunal. A similar relief was also sought for on the notice of demand and also a Writ of Prohibition to prohibit the respondents from realizing any amount pursuant to the order of appeal dated April 23, 2024 and the adjudication order dated June 22, 2023.

3. 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 23, 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 23, 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 23, 2024 passed by the appellate authority and the order of adjudication dated June 22, 2023 till the period of three months from setting up of the GST Tribunal.

4. The challenge in the writ petition was passed in the appeal by the first appellate authority affirming the order passed by the adjudicating

authority by which the demand of tax was modified by the appellate authority. None-the-less the appellant is still required to pay tax in terms of the order passed by the appellate authority.

5. As pointed out earlier, since the appellant is ready and willing to file the appeal before the tribunal upon its constitution, the appellant does not seek to canvass the merits of the matter before this court.

6. However, he seeks for appropriate protection so that the demand of tax is not enforced thereby rendering the proposed challenge to the order passed by the first appellate authority as infructuous.

7. It is not in dispute that as per the statutory requirement, at the time of preferring the appeal before the first appellate authority the appellant had deposited 10% of the disputed tax. In terms of the statute if the tribunal was functional and the appellant had to prefer an appeal, 20% of the disputed tax had to be remitted.

8. Considering the peculiar facts and circumstances and also noting that the tribunal is to become functional very soon, without prejudice to the rights and contentions of the appellant in the proposed appeal to be filed before the tribunal, the appellant is directed to further deposit 10% of the disputed tax each of these appeals within a period of six weeks from the date of receipt of the server copy of this order.

9. With the above reasons, the appeals are allowed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)