Form No. J.(2)
Item No. 3

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

HEARD ON: 10.09.2024

DELIVERED ON: 10.09.2024

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

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 1739 of 2024
With
I.A. No. CAN 1 of 2024

Flemingo Dutyfree Shop Pvt. Ltd. & Anr.
Vs.
The Deputy Commissioner of Revenue,
Salt Lake Charge & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan ....**for the appellants**

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique
Mr. Tanoy Chakraborty
Mr. S. Sanyal ....**for the respondents**

JUDGMENT

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

1. This intra-Court appeal filed by the unsuccessful writ petitioner is directed against the order dated August 28, 2024 in W.P.A. 16974 of 2024. In the said writ petition, the appellants had challenged the order passed under

section 73 of the WBGST Act/CGST Act, 2017 dated April 8, 2024 for the tax period April 2018 to March 2019.

2. The learned Single Bench was of the view that the appellants should exhaust the appellate remedy available under section 107 of the Act and accordingly, directed the appellants to apply before the appellate authority within a time-frame. Aggrieved by such order, the appellants have filed the present appeal.

3. We have elaborately heard the learned advocates for the parties. As could be seen from the order of adjudication passed under section 73(9) of the Act dated April 8, 2024, the appellants did not file any reply to the show-cause notice nor filed any prayer for adjournment and none appeared on behalf of the appellants on the date fixed for personal hearing. Therefore, the respondents cannot be blamed for completing the proceeding on the best of judgment basis and drawing up a final order.

4. The learned advocate for the appellants would plead that in the appellants' own case for the assessment year 2017-2018, on the same set of facts, the authority themselves have dropped the entire proceedings after having been satisfied with the explanation offered.

5. It is further submitted that on account of certain intervening circumstances, which were beyond the control of the appellants that the consultant, who was engaged in the matter did not take adequate steps to appear before the authority. This has resulted in an *ex-parte* order. Therefore, the learned advocate for the appellants would submit that one more opportunity may be granted to the appellants and the prayer itself is in the nature of a mercy petition.

6. In support of his contention that if in a previous assessment year, the facts were similar and the department had taken stand in favour of the assessee, in a subsequent year, the department is required to adopt the same approach as long as the earlier order remained unchallenged. In support of such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in **M/s. Radhasoami Satsang, Saomi Bagh, Agra v. Commissioner of Income Tax** reported in **(1992) 1 SCC 659**.

7. The Hon'ble Supreme Court in the said decision held that *res judicata* does not apply to income tax proceedings as each assessment year being a unit, what is decided is one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. The facts of the present case clearly show that in respect of earlier assessment year i.e. 2017-2018, on identical set of facts, it is seen that the department has dropped the demand and the proceedings have attained the finality. Therefore, in order to maintain a consistent approach in the matter, this Court is of the view that one more opportunity can be granted to the appellants to go before the authority and establish their case that it is similar to that of the case for the assessment year 2017-2018 among other grounds that they may be entitled to canvass.

8. For the above reasons, the appeal is allowed, the order passed in the writ petition is set aside. Consequently, the adjudication order passed under

section 73(9) of the Act dated April 8, 2024 is set aside and the matter is restored to the stage of show-cause notice dated December 5, 2023.

9. The appellants are directed to submit their reply within 15 days from the date of receipt of the server copy of this judgment and order along with all supportive documents. Thereafter the adjudicating authority shall fix a date for personal hearing and the appellants, without seeking for any adjournment, shall appear before the authority either in person or through their authorised representative and make their submissions.

10. After considering the reply to the show-cause notice and the oral submissions that may be made, the adjudicating authority is directed to pass fresh orders on merits and in accordance with law within a period of four weeks from the date on which the personal hearing is concluded.

11. No costs.

12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)