16.01.2024
Item No.11
gd/ssd

MAT/1880/2023
IA NO: CAN/1/2023, CAN/2/2023
M/S M K GUPTA AND CO AND ANR.
VS
UNION OF INDIA AND ANR.

Mr. Arijit Chakrabarti,
Mr. Nilotpal Chowdhury,
Mr. Prabir Bera,
Mr. Deepak Sharma
..for the Appellants.

Ms. Sabita Roy
..for the Union of India.

Mr. K.K. Maiti,
Ms. Manasi Mukherjee
..for CGST Authority.

Re: CAN 2 of 2023

1. CAN 2 of 2023 has been filed by the appellants seeking condonation of delay of six days in filing this appeal.

2. Considering the explanation which has been furnished in the application and also taking note of the stand of the learned counsel for the respondents that they are not opposing the application for condonation of delay, we are of the view that the delay in filing this appeal has been sufficiently explained and the appellants were prevented from filing the appeal within time on account of bona fide reason.

3. Hence, CAN 2 of 2023 is, accordingly, allowed. The delay in filing the appeal is condoned.

Re: MAT 1880 of 2023

4. This intra court appeal is directed against the order passed by the learned Single Bench dated 31st July, 2023 in WPA 16637 of 2023.

5. The learned Single Bench was fully satisfied that the writ petition has to be entertained and, accordingly, the same was admitted.

6. We find from the impugned order elaborate reasons have been given by the learned Single Bench by admitting the writ petition. However, in the penultimate paragraphs interim orders have been granted subject to the condition that the appellants make a pre-deposit of 5% of the total demand of tax arising out of the adjudication order impugned in the writ petition.

7. Considering the findings recorded by the learned Single Bench in the first three pages of the impugned order, we find that the learned Single Bench was prima facie satisfied that the appellants have made out a good case for entertaining the writ petition.

8. Under such circumstances, we are of the view that there will be necessity for the appellants to make any pre-deposit and the adjudication order should remain stayed till the writ petition is heard which has been directed to be listed on a particular date.

9. Therefore, the appeal is allowed and the order passed by the learned Single Bench directing the 5% of the tax demanded to be pre-deposit is set aside and there will be an order of interim stay of the order of adjudication till the writ petition is heard and disposed of.

10. The learned senior standing counsel for the respondent department would vehemently contend that in terms of Section 35 of the Central Excise Act as applicable to the service tax regime the interest of revenue has to be protected.

11. In the instant case we have perused the adjudication order from which prima facie we find that the adjudicating authority was satisfied that the services rendered by the appellants were to the North Eastern Frontier Railway and they were exempted. There are many places in the adjudication order wherein the authority has clearly recorded the finding that those services were exempted.

12. However, in the adjudication order the authority proceeds to confirm the demand in the show cause notice on the alleged ground that the appellants have not produced sufficient documents to prove that the work done as an original work.

13. The learned Single Bench has rightly recorded that there if there is any further documents to be produced by the appellants, the adjudicating

authority could have called upon the appellants to produce the same and such procedure was not resorted to.

14. Therefore, we are fully convinced that the adjudication order should remain stayed till the writ petition is disposed of.

15. The respondent department is directed to file their affidavit-in-opposition within two weeks from date; reply, if any, within a week thereafter.

16. Let the writ petition be listed before the concerned Single Judge in the week commencing 5th February, 2024.

17. With the above observation, the appeal stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)