16.01.2024
Item No.18
gd/ssd

MAT/1989/2023
IA NO: CAN/1/2023
DIPANKAR BHOWMIK
VS
STATE OF WEST BENGAL AND ORS.

Mr. Himangshu Kumar Ray,
Mr. Bhaskar Sengupta,
Ms. Shiwani Shaw
..for the Appellant.

Md. T.M. Sidsdiqui,
Mr. Tanoy Chakraborty
..for the State.

1. This intra court appeal is directed against the order dated 26th September, 2023 in WPA 23081 of 2023 by which the learned Single Bench declined to grant any interim order in favour of the appellant.

2. The writ petition is pending and a direction has been issued to file affidavit-in-opposition by the respondent department.

3. At the request of the learned advocates appearing for the appellant, the writ petition and the appeal are disposed of by this common judgment and order.

4. The petitioner was aggrieved by an order passed by the appellate authority, namely, the Joint Commissioner, State Tax, Berhampur Circle dated 29.05.2023 on the ground that the appellant did not have any adequate opportunity.

5. The appellate authority fixed the date of personal hearing on 29.05.2023 and admittedly the appellant did not attend the personal hearing and the order has been passed. Under normal circumstances, the court would have declined to interfere with the order.

6. However, we find that the appeal filed by the appellant was presented before the appellate authority on 25th May, 2022 and the appeal was taken up for hearing after one year and on the very first date, namely, 29.05.2023 the appeal has been disposed of.

7. Since there has been a delay of one year in taking up the appeal, the appellate authority could have granted one more opportunity to the appellant by issuing a fresh notice of hearing. Furthermore, we find that none of the grounds raised by the appellant in the appeal petition which is about 38 pages have been considered or dealt with.

8. Therefore, we are convinced that the appeal has to be heard out on merits and fresh orders have to be passed by the statutory appellate authority.

9. For the above reasons, this appeal as well as the writ petition are allowed and the order passed by the appellate authority dated 29.05.2023 is set aside and the matter is remanded to the appellate authority for fresh consideration.

10. The appellate authority shall fix a fresh date for personal hearing to the appellant or his authorized representative and after taking note of the grounds raised by the appellant and the documents that the appellant may produce, fresh orders be passed on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)