03.12.2024
Item No.12
gd/ssd

MAT/1983/2024
SHAIKH SONS & CO AND ANR.
VS
UNION OF INDIA AND ORS.
IA NO: CAN/1/2024

Mr. Himangshu Kumar Ray,
Mr. Sushant Bagaria,
Ms. Shiwani Shaw,
Mr. Subhasis Podder,
Mr. Amit Saha
..for the Appellants.

Md. T.M. Siddiqui,
Mr. T. Chakraborty
..for State.

Mr. Kausik Dey,
Mr. Kaustuv K. Maiti
..for the Respondent Nos.7 and 8.

1. This intra court appeal by the writ petitioners is directed against the order dated 1st October, 2024 in WPA 21478 of 2024.

2. Mr. Himangshu Kumar Ray, learned advocate for the appellants would submit that the appellants are not aggrieved by the direction issued in paragraph 8 of the impugned order by which the learned Single Bench directed the order of attachment issued in Form GST DRC – 13 dated 24th July, 2024, but is only aggrieved by the direction issued in paragraph 6 directing the appellant/writ petitioners to make pre-deposit of Rs.3,00,000/- which is over and

above 10% of the disputed tax which is statutorily required to be pre-deposit for preferring an appeal.

3. Since the statute prescribes a particular percentage, the same has to be adhered to by the assessee and at the normal circumstances the court will not alter the amount to be deposited but, however, in certain exceptional cases the court may exercise discretion and direct payment of a portion of the disputed tax. However, the instant case does not fall under any such exception.

4. Therefore, we dispose of this appeal by slightly modifying the direction issued in paragraph 7 of the impugned order by directing the appellant/writ petitioners to make pre-deposit of 10% of the disputed tax instead of Rs.3 lakhs within a period of 10 working days from the date of receipt of the server copy of this order and file an appeal electronically with the appellate authority. The appellate authority shall dispose of the appeal after affording an opportunity of personal hearing of the authorized representatives of the appellant within a reasonable period preferably within eight weeks from the date on which the personal hearing is concluded on merits and in accordance with law.

5. Upon the pre-deposit of 10% of the disputed tax in terms of the above order being made, the order of attachment issued in Form GST DRC – 13

dated 24th July, 2024 shall stand revoked and the appellant/writ petitioners shall be entitled to operate his bank account. In the event the appellant fails to comply with this order, the benefit of the order will not enure to the appellant and the appeal would automatically be dismissed without reference to this court.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)