05.03.2024
Item Nos.4-5
gd/ssd

WP.TT/7/2023
R. K. CONSTRUCTION AND ANR.
VS
SALES TAX OFFICER, DURGAPUR CHARGE AND ORS.
**with**
WP.TT/8/2023
R. K CONSTRUCTION AND ANR.
VS
SALES TAX OFFICER, DURGAPUR CHARGE AND ORS.

Mr. Siddhartha S. Sengupta,
Mr. Sumit Ghosh,
Ms. Samiddha S. Sengupta,
Mr. Souradeep Majumdar,
Ms. Bidisha Chakraborty
..for the Appellants.

Md. T.M. Siddiqui,
Mr. Saptak Sanyal
..for the State.

1. These intra court appeals have been filed challenging two individual orders passed by the West Bengal Taxation Tribunal in the appeals filed by the assessee, M/s. R.K. Construction.

2. The assessee approached the tribunal challenging the order passed by the 1st Appellate Authority under the provisions of the West Bengal Value Added Tax Act by which the 1st Appellate Authority had dismissed the appeal filed by the assessee on the ground that the mandatory pre-deposit of 15% was not complied with. The assessee contested the proceedings on merits of the matter stating that the demand which was raised on the assessee on

10.07.2017 was time barred and that the assessee was not afforded opportunity and there has been violation of principles of natural justice.

3. To buttress this contention, the learned advocate for the assessee placed a strong reliance on the reply given by the Public Information Officer to a query raised on behalf of the assessee under the provisions of the Right to Information Act, 2005, the reply dated 09.02.2024.

4. It is submitted that despite the assessee seeking for information as to whether the authority had obtained an order from the Commissioner extending the initial period of six months in terms of sub-section (4) of Section 43, the assessee was not furnished with the copy of such information.

5. The assessee has preferred an appeal under the provisions of the Right to Information Act, which is stated to be pending.

6. In support of his contention the learned advocate placed reliance on the decision of the Hon'ble Supreme Court in *Collector of Central Excise, Madras v. M.M. Rubber and Co., Tamil Nadu* reported in *1992 Supp(1) SCC 471*. To support the proposition that the date of such order or the decision is the date on which the order or decision was made and that if the statute prescribes a matter to be done in a particular manner, it can be done in such manner alone and not otherwise.

7. The learned tribunal by the impugned order dismissed the application filed by the assessee praying for condonation of delay of 58 days in filing the appeal. The reasons set out by the learned tribunal cannot be faulted, more particularly when the tribunal rightly took note of the fact that the appeal filed by the assessee before the 1st Appellate Authority without complying with the mandatory pre-deposit condition was not maintainable.

8. The learned advocate for the assessee would strenuously contend that the demand issued to the assessee was time barred.

9. However, in the present proceedings we cannot examine the merits of the matter since the appeal which was filed without pre-deposit before the 1st Appellate Authority is no appeal in the eye of law. So far as the validity of such pre-deposit condition as contained in the proviso under Section 84(1) of the West Bengal Value Added Tax Act, 2003, the same was subject matter of challenge before this court in a batch of writ petitions which was dismissed and as against which appeals were filed by the various assessees in MAT 783 of 2017 etc. batch and by judgment dated 25.03.2022 all the appeals were dismissed upholding the validity of the second proviso to Section 84(1) of the Act.

10. Thus, the writ petitioner/assessee has no other option except to pay the pre-deposit amount to be entitled to contest the appeal on merits.

11. Though much time has lapsed, we do not wish to foreclose the rights of the assessee and are inclined to give one more opportunity to the assessee and it will be open to assessee to avail the opportunity, if they choose to do so.

12. For the above reasons, the appeals are dismissed.

13. However, liberty is granted to the writ petitioner/assessee to pay the pre-deposit amount within 45 days from the date of receipt of the server copy of this order and the principal of such payment is paid before the 1st Appellate Authority under the provisions of the Act, the 1st Appellate Authority shall take up the appeal and decide the matter on merits and in accordance with law without preference to any observations made by the tribunal in the impugned order.

14. In the event the assessee chooses to take advantage of the liberty granted and the appeal is taken on file upon payment of pre-deposit, the Appellate Authority shall endeavour to dispose of the appeal as expeditiously as possible preferably within a period of two months from date on which the opportunity of

personal hearing is granted to the petitioner/assessee and the assessee concludes their submission.

**(T. S. SIVAGNANAM)**
**CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**