09.01.2024
Item No.07
RP/KC
Ct. No.1

MAT 2375 of 2023
+
IA No.CAN 1 of 2023

Subal Krishna Dey (HUF)
Vs.
The Assistant Commissioner of Sales Tax, Rajkatra Charge & Ors.

Mr. Ankit Kanodia
Mr. Megha Agarwal
Mr. Jitesh Sah
.....for the Appellant

Mr. Anirban Ray, Ld. GP
Md. T.M. Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
.....for the State/Respondents

1. The petitioner is aggrieved by the order passed by the learned Single Bench declining to grant any interim order. On perusal of the order impugned in the writ petition passed by the Appellate Authority, namely, the Joint Commissioner, we find that there is no scope for granting any interim order. However, at the request of the learned advocates for the either side, the writ petition and the appeal are taken up for disposal by a common order and judgment.
2. The appellant had approached this Court earlier which culminated in an order passed in MAT 1861 of 2022. By judgment dated 16th December, 2022 the appeal was disposed of by giving a direction to the appellant to file a statutory appeal before the

Appellate Authority. In paragraph 6 of the said judgment it has been specifically observed that the appellant is at liberty to raise all issues before the Appellate Authority which shall be considered in accordance with law.

3. The first and foremost issue raised by the appellant was that no show cause notice in the form of DRC-01 was issued. The Appellate Authority while dealing with the said issue has referred to the observations made in MAT 1861 of 2022 and stated that non-issuance of show cause notice in the form of DRC-01 has no importance in this case as this Court had directed the appellant to file a statutory appeal. In our view, the observations made by the Appellate Authority is a wrong understanding of the scope of the direction issued in MAT 1861 of 2022. In the said judgment, the Court permitted the appellant to raise all issues and it goes without saying that the appellant would be entitled to raise the issue as regards non-issuance of the show cause notice in the form of DRC-01 in accordance with law. Therefore, the matter is to be re-heard by the Appellate Authority. Accordingly, the appeal along with the connected application and the writ petition are disposed of by setting aside the order dated 28th August, 2023 passed by the Appellate Authority and the matter is remanded back to the Appellate

Authority for fresh consideration. The Appellate Authority is directed to afford one more opportunity of personal hearing tot he authorized representative of the appellant and decide all issues including the issue as to whether the assessment could have been finalized without issuance of show cause notice in the form of DRC-01. The appellant is directed to cooperated in early disposal of the appeal which shall be disposed of expeditiously preferably within a period of thirty days from the dated of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)