30.01.2024
Item No.20
gd/ssd

MAT/2432/2023
IA NO: CAN/1/2023
DURGA TRADING COMPANY
VS
STATE OF WEST BENGAL, DIRECTORATE OF COMMERCIAL TAXES AND ORS.

Mr. Rajesh Kumar Mishra,
Mr. Sutirtha Das
..for the Appellant.

Mr. Anirban Roy,
Mr. T.M. siddique,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order dated 23rd November, 2023 in WPA 25571 of 2023 by which the writ petition filed by the appellant was dismissed on the ground that the order which was challenged in the writ petition dated 14th August, 2023 is an appellable order.

2. The learned advocate for the appellant would plea that one more opportunity may be granted to the appellant to place material on record to show that in all the transactions done by the appellant there was no mismatch and the ITC which was to avail just and proper. Further, it is submitted that the appellant could not file a reply to the show cause notice dated 23.5.2023 since the partner who was taking care in the

entire matter had severe medical complications and ultimately passed away.

3. Considering the fact that the appellant is stated to process sufficient records to clarify the mismatch alleged by the department in the show cause notice dated 23.5.2023, we are of the view that one more opportunity can be granted to the appellant to go before the adjudicating authority, namely, the Assistant Commissioner of State Tax subject to certain conditions:

> "The appellant is directed to pay 10% of the disputed tax liability which was quantified of the show cause notice as Rs.85,46,660.10 p. The 10% of the said amount shall be paid within a period of three weeks from the date of receipt of the server copy of this order and after such payment the appellant is granted an opportunity to file their reply to the show cause notice enclosed documents and on receipt of the reply, the adjudicating authority, namely, the Assistant Commissioner of State Tax shall afford an opportunity of personal hearing to the authorized representative of the appellant and pass fresh orders on merits and in accordance with law."

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

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)