OD–43

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/21/2023
IA NO: GA/1/2024
M/S. ANAPOL SECURITY AND SECRET SERVICE (H)
VS.
ADDITIONAL COMMISSIONER OF CENTRAL TAX & ANR.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th April, 2024

Appearance :
Mr. Oishik Chatterjee, Adv.
...for appellant

Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
...for respondent

The Court : This appeal by the assessee is directed against the order dated 11th August, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, by which the appeal filed by the assessee was dismissed.

On perusal of the impugned order, we find that the learned Tribunal was largely persuaded to dismiss the appeal on the ground that the writ petition filed by the appellant before this Court prior to approaching the appellate authority was dismissed. We find from the order passed in the writ petition in WPO 2985 of 2022, dated 23rd November, 2022, the Court was not inclined to entertain the writ petition since the appeal was filed belatedly. However, what is important to take note is that the appellant's consistent case is that the order-in-original was never served on them. There was no pre-consultation made prior to concluding the proceedings and passing the orders-in-original and since the matter arose during the period of Covid-19 pandemic, an opportunity of virtual hearing ought to have been granted to the assessee. After the dismissal of the writ petition the appellant had filed an appeal before the appellate authority wherein a specific ground has been raised that the assessee was completely unaware of the order-in-original and came to know about it only after recovery proceedings were initiated by the Superintendent, TAR, Haldia-1 Division on 31st October, 2022. A copy of the order-in-original was enclosed with the said letter. Therefore, the assessee contended that the time for filing the appeal commenced from 1st November, 2022 and the appeal filed by the assessee before the appellate authority on 20th December, 2022 is within time. This aspect of the matter was never adjudicated at any stage of the proceedings namely, before the learned writ court in the writ petition filed by the assessee, by the appellate authority or for that matter, by the Tribunal. The appellate authority while rejecting the appeal on two grounds namely, on the ground of being barred by time and secondly, on the ground of pre-deposit condition was not complied with. On perusal of the order passed by the appellate authority dated 22nd March, 2023, we find a definite stand has not been taken that the order-in-original which was said to have been issued on 23rd March, 2022 was received by the assessee and the date of receipt has also not been mentioned. So far as the allegation that pre-deposit condition has not been complied with, the said finding of the appellate authority has been found to be incorrect by the Tribunal since on account of certain technical glitches the pre-deposited amount had got credited into another electronic ledger. During the pendency of the proceedings by way of garnishee order, further amounts have already been recovered and as of now, learned counsel for the appellant on oral instructions from his client would submit that more than 15% of the demand has already been recovered and the bank account has also been attached, as a result of which the business of the appellant is in the verge of being closed.

Considering the peculiar facts and circumstances of this case, we are of the view that the appellant should not be left remediless, that is, should not be left without an opportunity to put-forth his case on merits, more particularly, when the matter was decided during the period of Covid-19 pandemic and also the fact that the appellant's contend that no opportunity of virtual hearing was granted by the adjudicating authority. Further, as noted above, approximately 15% of the entire demand has been recovered and considering all these facts we are of the view that one opportunity can be granted to the appellant to file the statutory file before the appellate authority.

Accordingly, the order passed by the learned Tribunal and that of the learned Appellate authority are set aside and the appellate authority is directed to take on the appeal filed by the assessee and if required, the assessee is directed to file a fresh copy of the appeal petition. The appeal shall be entertained, opportunity of personal hearing be granted to the authorised representative of the assessee and a decision be taken on merits and in accordance with law.

It is made clear that this order has been passed considering the peculiar facts and circumstances of the case and not to be treated as a precedent.

The stay application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)