IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

Present :

The Hon'ble Chief Justice T. S. Sivagnanam

And

The Hon'ble Justice Chaitali Chatterjee (Das)

MAT 686 of 2025
CAN 1 of 2025

Baazar Style Retail Limited
-Vs-
Additional Commissioner, CGST and Central Excise, Kolkata North Commissionerate & Another

For the appellant :- Mr. Vinay Kr. Shraff
Ms. Priya Sarah Paul
Mr. Dev Kr. Agarwal
Ms. Swarnwarshi Poddar
Ms. Ankita Biswas

For the Respondents :- Mr. Uday Sankar Bhattacharya
Mr. Kaushik Dey
Mr. Tapan Bhanja

Heard on : 26.06.2025.

Judgment on : 26.06.2025.

T. S. SIVAGNANAM, CHIEF JUSTICE.:

1. This intra court appeal has been filed by the writ petitioner challenging the order passed by the learned Single Bench in WPA 5232 of 2025 dated 16th April, 2025.

2. The said writ petition was dismissed on the ground that an effective alternate remedy is available to the appellant as against the order of adjudication passed by the adjudicating authority by filing an appeal before the Commissioner, Central Tax (Appeal).

3. Assailing the correctness of the impugned order, the present appeal has been filed.

4. We have elaborately heard the learned advocates for either of the parties.

5. It is well settled that the rule of not entertaining an application under Article 226 of the Constitution of India when a statutory appellate remedy is available is not rigid rule but an exception can be curbed out for the said rule and the Hon'ble Supreme Court in several decisions have curbed out such exceptions.

6. The question would be whether the case on hand would fall within any one of such exception in circumstances.

7. It is not in dispute that the appellant was given adequate opportunity to put forth its submissions even prior to the show cause notice when statements were recorded and after the show cause notice was issued, reply was submitted and the matter was adjudicated following the provisions under the Act.

8. Therefore, it cannot be stated to be a case where there has been violation of principles of natural justice.

9. Furthermore, the appellant cannot state that the adjudicating authority did not have jurisdiction to issue the show cause notice nor to pass an adjudication order but the jurisdictional aspect is being sought to be focused qua the facts and circumstances of the matter and not otherwise.

10. Therefore, this exception also will not apply in the case.

11. The third broad exception would be whether the order of adjudication is devoid of reasons and whether no reasonable person can come to such conclusion. The order of adjudication is a very lengthy order considering all aspects of the matter and, therefore, cannot be stated to be an order, devoid of reasons or passed the non-application of mind.

12. Thus, the three broad exceptions are not applicable to the instant case.

13. That apart, the issues which have been canvassed in the writ petition as well as before us all requires adjudication into disputed questions of fact. The length of the delay in filing the returns appears to be not sole issue in the instant case but there is something more than that as there is an allegation of fraud and mis-statement, wrong available of input tax credit etc.

14. Therefore, the appellant has to necessarily agitate the appellate remedy available under the Act after complying with the conditions and the appellate remedy cannot be construed to be non-efficacious or non-effective.

15. The matter concerning levy of tax, only in exceptional circumstances the assessee can be permitted to bypass the statutory remedy as the hierarchy of the remedies available under the relevant taxation statute are always efficacious and effective.

16. Therefore, there can be no exception to the instant case to allow the appellant to bypass such remedy.

17. For the above reasons, we find no grounds to interfere with the order passed by the learned Single Bench.

18. Accordingly, the appeal fails and dismissed.

19. The appellant is directed to file a statutory appeal before the Commissioner, Central Tax (Appeal) after complying with the conditions within a period of 30 days from the date of receipt of server copy of this order.

20. If such appeal is filed, the appellate authority shall not dismiss the appeal on the ground of limitation but consider the same on merits and in accordance with law after affording opportunity of hearing either virtual or physical to the authorized representative of the appellant.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)