Form No. J.(2)
Item No.4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 14.01.2025

DELIVERED ON: 14.01.2025

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A. 1272 of 2024
With
IA No. CAN 1 of 2024

Awadesh Singh
Versus
Assistant/Deputy Commissioner, Central Tax, Shibpur Division & Ors.

Appearance:-
Mr. Debrup Bhattacharjee
Mr. Nilanjan Bhattacharya
.....For the Appellant
Mr. Om Narayan Rai
Mr. Aayush Sharma
.....For the Union of India
Mr. Bhaskar Prasad Banerjee
Mr. Abhradip Maity
Ms. Shatabdi Sen
.....For the CGST & CX Authority

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. Affidavit-of-service filed in Court today is taken on record.

2. This intra-Court appeal filed by the writ petitioner is directed against the order dated 1st August, 2024 passed in W.P.A. 18595 of 2022. In the said writ petition, the appellant had challenged the show-cause-cum-demand notice dated 28th December, 2020 issued under Section 73(1) of the Finance Act, 1994.

3. The learned advocate for the appellant submitted that the show-cause notice itself is not sustainable. However, during the pendency of the matter, the show-cause notice has been adjudicated and an order has been passed on 31st January, 2022.

4. Therefore, the learned Single Bench opined that the appellant should avail the alternate remedy available under the Act.

5. We are in full agreement with the finding rendered by the learned Single Bench since the challenge to a show-cause notice cannot be maintained at this stage, especially when the show-cause notice has been adjudicated and an order has been passed on 31st January, 2022.

6. Therefore, we find no ground to interfere with the impugned order and we clarify that it will be well-open to the appellant to raise all points including the issue that it is not a case, where a show-cause notice could have been issued to the appellant/assessee while preferring an appeal before the appellate authority against the adjudication order dated 31st January, 2022.

7. With these above observations, appeal and the connected application (CAN 1 of 2024) stand dismissed.

8. Learned advocate for the appellant requested that the time for filing the appeal may be extended.

9. In the light of the above, if the appellant files the statutory appeal before the appellate authority within 30 days from the date of receipt of server copy of this order, the appeal shall not be rejected on the ground of limitation but, shall be heard and decided on merits and in accordance with law.

10. No costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)