

Item no. 04

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 557 of 2022

with

IA No. CAN 1 of 2022

NTC Industries Ltd.

vs.

State Tax Officer, Karagpur Zone & ors.

Appearance:

For the Appellants : Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mr. Gobinda Dey
Mr. Gobind Jethalia

For the Respondents : Mr. A. Ray
(State) Mr. T. M. Siddiqui
Mr. Debasish Ghosh

Heard on : 07.06.2022

Judgment on : 07.06.2022

T.S. Sivagnanam J.:

This intra court appeal by the appellant is directed against an order dated 07.04.2022 passed in WPA 6146 of 2022 filed by the

appellant challenging the order dated 31.03.2022 passed under Section 129(3) of the Central Goods and Services Tax Act, 2017 read with relevant provisions of West Bengal Goods and Services Tax Act, 2022, Integrated Goods and Services Tax Act, 2017 and Goods and Services Compensation to States Tax Act, 2017. The learned Single Judge has dismissed the writ petition by directing the appellant availing alternative remedy. Aggrieved by the same, the appellant is before us.

We have heard the learned counsel for both the parties.

We are not inclined to go into the merits of the matter but we are convinced that the arguments made by the learned counsel for the appellant that there has been violation of principles of natural justice. We say so because of the fact that the appellant has been granted seven days time to submit its reply to the show cause notice dated 27.03.2022. The appellant's case is that they were not communicated with the same on 27.03.2022 but received the same only on 29.03.2022. Even going by the date of the show cause notice dated 27.03.2022, the appellant had time to submit its reply on or before 02.04.2022. However, the impugned order was passed on 31.03.2022 i.e. before the stipulated time limit. We find that in the order dated 31.03.2022 in paragraph 7, the Officer has referred to an objection filed by the appellant and certain reasons have been set out as to why the objections are not acceptable.

Learned counsel appearing on behalf of the appellant submitted that no objections were filed to the show cause notice dated

27.03.2022 and what has been referred to was a letter which was given at the first instance when the appellant was called upon to explain the nature of transaction and movement of goods. In any event, when an opportunity is given to show cause it should be an effective opportunity and not an empty formality. The interest of the revenue has been sufficiently safeguarded as the goods have been released on furnishing of bank guarantee and bond. Therefore, we are of the considered view that adequate opportunity should be granted to the appellant and thereafter the authority should take a decision in the matter.

In view of the above, the order passed in the writ petition is set aside. Consequently, the order dated 31.03.2022 is set aside. We direct the appellant to treat the order dated 31.03.2022 as a show cause notice and submit its objections/reply within ten days from the date of receipt of the server copy of this order. On receipt of the reply, the concerned authority shall afford an opportunity of personal hearing to the authorized representative of the appellant and pass a fresh order on merit and in accordance with law. Till orders are passed by the respondent authority in terms of the above direction, the bank guarantee shall be kept alive and shall abide by the order that may be passed pursuant to the above direction.

For the reasons given hereinabove, the appeal stands **allowed**. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)