

Item No.11.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 27.09.2022

DELIVERED ON:27.09.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. 1191 of 2022

With

I.A. No.CAN 1 of 2022

M/s. Ramprasad Gangaprasad & Ors.

Vs.

Assistant Commissioner of State Tax, Beadon Street Charge & Ors.

Appearance:-

**Mr. Siddhartha Sankar Sengupta,
Mr. Sumit Ghosh**

... for the appellant.

**Mr. T. M. Siddique,
Mr. Nilotpal Chatterjee
Mr. V. Kothari**

.... for the State/respondents.

JUDGMENT

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

1. This intra Court appeal at the instance of the writ petitioners is directed against the order dated 4th July, 2022 in W.P.A. No.11344 of 2022. This is the second round of litigation. Earlier the appellants had approached this Court and filed a writ petition challenging a show cause notice contending that the authority does not have jurisdiction to issue the show cause notice and consequently, the demand, which was raised on the appellants dated 23rd February, 2021 was illegal. The writ petition being W.P.A. No.20136 of 2021 was dismissed by order dated 21st December, 2021 against which an intra-Court appeal being MAT 96 of 2022 was filed, which was disposed of by an order dated 22nd February, 2022. The operative portion of the same reads as follows:-

“We find that in the reply given by the appellants dated 1.10.2021 the contentions have not been framed properly and legally. We are of the considered view that the appellants are entitled to one more opportunity to place the entire factual and legal submissions which the authority should consider and thereafter take a decision in accordance with law by passing a speaking order. For such reasons, the order of demand dated 23.02.2021 shall be treated as additional show cause notice and

the appellants are directed to submit their additional reply within two weeks from the date of receipt of server copy of this order. On receipt of the same the concerned authority shall afford an opportunity of personal hearing to the appellants and adjudicate the matter and pass a reasoned order on merit in accordance with law. However, if the appellants raise the question of jurisdiction, the concerned authority should decide the same while deciding the other issues on merit.

In the light of above, the demand, which has been raised on the appellants, shall be kept in abeyance for a period of four weeks from the date of receipt of the server copy of this order within which the adjudication shall be completed.

Needless to mention the appellants shall extend full cooperation with the proceedings without seeking unnecessary adjournments.”

2. Pursuant to the above direction, it appears that the appellants had submitted their additional explanation and the authority viz., the Assistant Commissioner of State Tax has passed the order dated 6th April, 2022, which was impugned in the

writ petition. The learned Single Bench dismissed the writ petition on the ground of availability of alternative remedy.

3. The learned Advocate appearing for the appellants would strenuously contend that the entire proceedings is ab initio void and it is without jurisdiction.

4. In our considered view, the issue relating to the jurisdiction of the authority can very well be raised before the appellate authority and it is the mixed question of fact and law, which can be canvassed by the appellants before the appellate authority. Therefore, we are of the view that the learned Single Bench rightly refused to entertain the writ petition on the ground of availability of alternative remedy, which, in our view, is not only efficacious but also effective as well.

5. The learned Advocate appearing for the appellants submitted that during the pendency of the proceedings, about Rs.29 lakhs has been recovered from the appellants' bank account not only to cover the period with the present writ petition but also in the

connected matter for the subsequent period, which is subject matter of MAT 1192 of 2022.

6. In the light of the above, while dismissing the appeal and affirming the order passed by the learned Writ Court, we direct the appellants to file the appeal before the concerned appellate authority in physical form within a period of five weeks from the date of receipt of the server copy of this judgment and order and raise all contentions before the appellate authority.

7. Till such time, no further recovery shall be made from the appellants and the amount of Rs.29 lakhs, which was recovered from the appellants' bank account shall be reckoned towards the pre-deposit, which is mandatorily to be made while filing the appeal petition. The appeal shall be heard and disposed of on merit and in accordance with law after affording an opportunity of personal hearing to the appellants or their authorised representative.

8. The appellants are granted liberty to move before the appellate authority by way of an interlocutory application to lift the lien created on the appellants' bank account by the

original authority. Needless to state that if the appeal is not filed within the time permitted, the benefit of this judgment and order will not enure in favour of the appellants.

9. There shall be no order as to costs.

10. 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, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN / PALLAB (AR.C)