

Item No.13.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON:11.08.2022

DELIVERED ON:11.08.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.1112 of 2022

With

I.A. No.CAN 1 of 2022

Satish Kumar Jaiswal.

Vs.

**Designated Committee, Kolkata North Commissionerate
comprising of the Principal Commissioner of Central Tax,
Kolkata North Commissionerate & Ors.**

Appearance:-

Mr. Akshat Agarwal

..... for the appellant.

Mr. Partha Chakraborty

... for the Union of India.

Mr. Bhaskar Prosad Banerjee

... for the CGST Authority.

JUDGMENT

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

1. This intra-Court appeal is directed against the order dated 29th June, 2022 passed in W.P.A. No.7767 of 2021. By the said order, the writ petition filed by the appellant/ writ petitioner was disposed of by directing the authority concerned to consider and dispose of the representation given by the appellant, which is marked as Annexure "P/5" in the writ petition within a reasonable time and preferably within a period of eight weeks from the date of communication of the order. Identical order was put to challenge in **M.A.T. 1111 of 2022** in the **Kavita Jaiswal Vs. Designated Committee, Kolkata North Commissionerate & Ors.** and the same was disposed of by the judgment and order dated 26th July, 2022. The said judgment and order reads as follows:-

"This intra-Court appeal is directed against the order dated 29th June, 2021 passed in WPA 7764 of 2021. The appellant had filed this writ petition praying for directions upon the respondent authorities to accept payment of tax dues to the tune of Rs.56,55,490.80 as per the Statement in Form SVLDR-3 issue discharge certificate settling the disputes accordingly and granting all consequential reliefs from 01.04.2014 to 01.06.2017. The appellant also prayed for appropriate direction to allow the appellant to avail the benefit of SVLDR Scheme, 2019. The writ petition was heard on 25.11.2021 and the learned Single Judge passed the following order:-

" Heard learned advocates appearing for the parties.

The main grievance of the petitioner in this writ petition is that the petitioner could not avail the benefit of SVLDRS in spite of her best effort due to technical glitches in the official portal of CBIC and in spite of bringing this problem to the notice of the respondents concern by two representations which were not considered by the respondents according to the petitioner.

Learned advocate appearing for the respondents is disputing this allegation of technical glitches in the official portal of the department, which in my view, can be considered on Affidavit by the respondent with supporting documents and also to explain as to what prevented them from considering the two representations of the petitioner which has been annexed to the writ petition, made before the respondent authority concerned about his grievance of technical glitches it faced during the relevant time.

A responsible officer of the department must affirm the Affidavit explaining the reason for delay in disposal of aforesaid representation by way of affidavit.

Let the respondent file Affidavit-in-Opposition to the writ petition by 6th December, 2021 peremptorily and reply thereto, if any, by the petitioner on 9th December, 2021. If no such Affidavit is filed adverse inference will be taken against the respondents. Respondents concerned shall also give explanation on the aspect referred hereinabove.

List this matter list on 10th December, 2021 at the top of the list.

Leave is granted to the petitioner to file supplementary affidavit annexing the legible copy of the document regarding attachment of bank account in question by 29th November, 2021.”

On reading of the above order it is seen that the Court was satisfied that the appellant had made out a prima facie case and precisely for such reason affidavit-in-opposition was directed to be filed by the respondent and the writ petition was directed to be listed on 10th December, 2021 at the top of the list. Further, the learned writ Court had granted permission to file supplementary affidavit, which has also been complied with. Subsequently the matter was heard on 14.12.2021 and on the said date the learned writ Court had directed the matter to be listed for hearing after

Christmas Vacation and the respondents were directed to maintain status quo till 11th January, 2022 and/or until further order, whichever is earlier. Thereafter, the matter was not listed. We are informed by the learned advocate for the appellant that the writ petition was listed subsequently and an interim protection granted in favour of the appellant was extended from time to time. Ultimately, the matter was heard on 29.06.2022 and the learned writ Court disposed of the writ petition by directing the representation to be considered by the authority. In our respectful view, after affidavit-in-opposition has been filed and the reply has also been filed to the said affidavit-in-opposition, it would be better if decision is taken on merits of the matter since the learned writ Court had recorded in its order dated 25.11.2021 that the allegation of technical glitches made by the appellant was not wrong and they have denied it. In such circumstances, by directing disposal of the representation may not yield any result because already the respondents have filed their affidavit-in-opposition and have made their stand clear. Therefore, we are of the view that the writ petition should be decided on merits.

*For the reasons stated hereinabove, the appeal stands **allowed** and the order dated 29.06.2022 is set aside and the writ petition is restored to its original file and number to be heard and decided by the learned Single Judge on merits and in accordance with law.*

Since the appellant had benefit of order of status quo in pending writ petition the respondent authorities are directed not to take any coercive action against the appellant till the writ petition is heard and disposed of. Interim order, already

granted, shall remain in force for a period of eight weeks or till the writ petition is heard, whichever is earlier.

Consequently, connected application stands disposed of.”

2. The facts of the case on hand are identical to that of the aforementioned decision except of the slight change of dates. In the instant case, the writ petition was filed during March, 2021 and on 29th April, 2022 the learned writ Court permitted the affidavit-in-opposition filed by the respondent be kept on record and directed that the respondent shall not take any coercive action against the appellant for recovery of the demand in question. This interim order had continued till the writ petition was disposed of by the impugned order.

3. Considering the fact that the identical issue has been remanded to the learned writ Court for which the writ petition to be heard and decided on merits, we are of the opinion that an identical direction can be issued in the present case as well.

4. For the above reasons, the appeal is allowed and the order dated 29th June, 2022 is set aside and the writ petition is restored to its original file and number and be heard and

decided by the learned Single Bench on merits and in accordance with law.

5. Since the appellant had the benefit of order of *status quo* pending writ petition, the respondent authorities are directed not to take any coercive action against the appellant till the writ petition is taken up for hearing by the learned Single Bench.

6. We give liberty to the learned Advocate for the appellant to mention before the appropriate learned Single Bench for early listing of the writ petition. I.A. CAN 1 of 2022 is disposed of accordingly.

7. No costs.

8. 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,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)