

Item no. 03

**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 498 of 2022

with

IA No. CAN 1 of 2022

S. S. Enterprise & anr.

vs.

State Tax Officer, New Market Charge & 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. S. Mukherjee
Mr. Debasish Ghosh
Mr. Nilotpal Chatterjee

Heard on : 07.06.2022

Judgment on : 07.06.2022

T.S. Sivagnanam J.:

This intra court appeal by the writ petitioners is directed against an order dated 21.03.2022 passed in WPA 4360 of 2022. The

appellants are before us on the ground that the interim order sought for in the writ petition was not granted. The order which has been impugned in the writ petition is an order passed by the respondent authority blocking the electronic credit ledger account of the appellant dealer.

The learned Single Judge was of the view that the appellant has not made out a prima facie case for grant of interim order prior to filing of affidavits. Therefore, we find that the prayer was not outrightly rejected but affidavit-in-opposition has been directed to be filed by the respondents and also liberty has been granted to file reply.

Learned counsel appearing on behalf of the appellant would vehemently contend that the appellant has been in the business of dealing scrap papers for long 30 years and they are honest tax payers and on account of blocking of their electronic credit ledger account their business activity has been affected and they put to great prejudice. On a query raised by the court as to whether the appellants had approached the concerned State Tax Officer, Mr. Dugar would submit that the appellant had submitted a representation on 21.02.2022 requesting the Assistant Commissioner of State Sales Tax, New Market Charge to withdraw the negative blocking of their electronic credit ledger and credit of Rs. 1,27,54,701.00 debited on 16.02.2022. It is submitted that this request has not been considered.

Learned counsel appearing on behalf of the appellants placed reliance on the decision of Hon'ble High Court at Gujarat dated

03.02.2022 passed in R/Special Civil Application No. 18059 of 2021 (Samay Alloys India Pvt. Ltd. vs. State of Gujarat). This decision has been pressed into service for the proposition that in order to invoke the power to block the electronic credit register, credit of input tax should be available in the electronic credit ledger and such credit should be claimed to have been fraudulently availed.

Further, it has been held that in case where credit of input tax were not available in the electronic credit ledger or such credit has already been utilized, the power conferred under the relevant rules cannot be invoked. The representation dated 21.02.2022 is still pending with the authority.

Therefore, this court is of the view that while declining to interfere with the order of the learned Single Judge, we deem it appropriate to direct the concerned respondent to dispose of the representation dated 21.02.2022 by taking note of the legal position and also bearing in mind that unless the appellant, who is a registered dealer, is allowed to carry on business and tax cannot be recovered. We should not be mistaken for saying as if errant dealer should be left scot-free, if there is any illegal arrangement of input credit tax stringent action should be taken. However, till final orders are passed, if the credit which was not availed on the date when the blocking was done namely 16.02.2022 is also to be blocked, then it might cause prejudice to the dealer. This aspect may be borne into mind by the concerned respondents and appropriate orders be passed on merit and in

accordance with law within 10 days from the date of receipt of server copy of this order after affording an opportunity of personal hearing to the authorized representative of the appellants.

Needless to point out that the representation given by appellants dated 21.02.2022, is only the unblocked negative credit and this can very well be considered by the concerned respondent. We also make it clear that any order may be passed by the authority will in no manner prejudice the rights of the parties, both the appellants and the Department in the pending writ petition.

With the above observations, the appeal stands **disposed of**. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)