

Item No.6.

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

HEARD ON: 08.06.2022

DELIVERED ON:08.06.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 714 of 2022
With
I.A. No.CAN 1 of 2022
With
I.A. No.CAN 2 of 2022**

**Amar Kumar Saha, Proprietor of Amar Construction
VERSUS**

**The Deputy Commissioner of Revenue, Directorate of Revenue Intelligence and
Enforcement & Ors.**

Appearance:-

**Mr. Ankit Kanodia,
Ms. Megha Agarwal**

.....for the appellant.

**Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee**

.. for the respondents.

JUDGMENT

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

Re : I.A. No.CAN 2 of 2022

1. This is an application praying for condonation of delay of 37 days in preferring the instant appeal.

2. Having heard Mr. Kanodia, learned advocate appearing for the applicant/appellant and Mr. Ghosh, learned Government advocate appearing for the respondents, we are of the considered view that sufficient cause has been shown for belated presentation of the appeal.

3. Accordingly the application is allowed.

Re : M.A.T. 714 of 2022

4. This intra-Court appeal filed by the writ petitioner is directed against the order dated 17th February, 2022 in W.P.A. No. 2168 of 2022. The appellant had filed the writ petition challenging an order passed by the respondents under section 74(9) of the CGST/SGST Act. To take a decision in this appeal, we are not required to examine the merits of the matter as the appellant is before us with the grievance that the learned single Bench having directed the respondents to file their

affidavit-in-opposition within a time-frame, ought to have granted an interim order in the interregnum protecting the interests of the appellant as the department has been continuously recovering the amount as quantified in the order impugned in the writ petition by debiting the same from the credit ledger account.

5. In our considered view, the learned single Bench has not rejected the prayer sought for by the appellant in its entirety and the writ petition is pending and it was of the prima facie view that to take a decision in the matter, affidavit-in-opposition is required to be filed.

6. Mr. Ankit Kanodia, learned advocate appearing for the appellant submitted that as per the show-cause notice, the demand was around Rs. 4.93 crores and during the adjudication process, the appellant had paid Rs. 50 lakhs and thereafter a sum of Rs. 40 lakhs has been recovered from the appellant by debiting the credit ledger account and the percentage of the amount so far recovered is close to 20% of the entire demand.

7. It is submitted that had the appellant preferred an appeal as against the order impugned in the writ petition, the appellant would have been required to pre-deposit only 10% of the tax in dispute. Therefore, it is submitted that the interest of the revenue has been sufficiently safeguarded and any further recovery without reference to the appellant would cause great prejudice to him.

8. Further, it is submitted that the time for filing a statutory appeal as against the order impugned in the writ petition had expired only on 28th May, 2022 and even much prior to that recoveries have been effected. It is further submitted that in the writ petition a specific ground has been raised with regard to the jurisdiction of the authority to issue show-cause notice and to adjudicate the matter. It is fairly submitted that such objection was not raised at the first instance by submitting the reply to the show-cause notice but it is the submission of the learned advocate for the appellant/petitioner, a jurisdictional issue can be canvassed at any point of time and there is nothing to indicate that the appellant had given up such a point nor acquiesced himself of that position.

9. Mr. Ghosh, learned Government advocate appearing for the respondents submitted that as against the order impugned in the writ petition, the appellant ought to have filed an appeal and not a writ petition. Furthermore, the authority, who issued the show-cause notice and adjudicated the same has sufficient jurisdiction to do so under the provisions of the relevant statutes.

10. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record. As pointed out earlier, the learned single Bench has not rejected the prayers sought for in the writ petition and has thought it fit to call for affidavit-in-opposition to be filed by the respondents within a time-frame. In the prima facie opinion of the learned writ Court there was no scope for passing any interim order. However, this is only a prima facie view, as recorded by the learned writ Court, more particularly, when the writ petition is still pending.

11. Be that as it may, the submission of the learned advocate for the appellant appears to be reasonable because if the appellant had preferred a statutory appeal, he would be

statutorily required to pre-deposit 10% of the disputed amount of tax and admittedly close to 20% of the disputed amount of tax has already been recovered. That apart, if any recovery proceeding has been initiated prior to 28th May, 2022, i.e. prior to expiry of the period of limitation for filing a statutory appeal, then such recoveries will have no sanction of law as it would, in effect make the appellate remedy infructuous. In any event, the recoveries to close to 20% of the entire demand having been made, we are of the view that till the writ petition is heard and disposed of, no further recovery shall be made from the appellant. The Learned Government advocate submitted that the affidavit-in-opposition will be filed before the learned Single Bench on 20th June, 2022.

12. Let a soft copy of the affidavit-in-opposition be shared with the learned advocate for the appellant not later than 19th June, 2022 and if the appellant desires to file a reply, the same should be filed not later than 22nd June, 2022. It is thereafter the matter can be listed before the Learned Single Bench for being heard and disposed of.

13. We grant liberty to the learned advocates appearing on either side to make a mention before the learned Single Bench for listing of the matter and also placing this order for the consideration of the learned Single Bench.

14. With the above observations, the writ appeal and the connected application is disposed of.

15. No costs.

16. 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)