

Item No.5.

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

HEARD ON: 10.11.2022

DELIVERED ON:10.11.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T No.1364 of 2022

With

I.A. No.CAN 1 of 2022

Green Fizz Beverages Private Limited.

Vs.

State of West Bengal & Ors.

Appearance:-

Mr. Srijib Chakraborty,

Mr. Suryaneel Das

Mr. Aditya Mondal

..... for the appellant

Mr. Anirban Ray, Id. G. P.,

Mr. Debasish Ghosh,

Mr. D. Sahu

..... for the State.

JUDGMENT

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

1. Affidavit-of-service filed in Court today be taken on record.

2. This intra court appeal by the writ petitioner is directed against the order dated 18th July, 2022 in W.P.A. 15484 of 2022. The writ petition was filed by the appellant challenging an order passed by the appellate authority, namely, Senior Joint Commissioner of State Tax Appeals, Central Section, Kolkata and Bureau of Investigation, Unit - II dated 21st December, 2018. The learned Single Bench dismissed the writ petition on the ground that the writ petition was filed after a period of 3 and $\frac{1}{2}$ years. The explanation given by the appellant is that as against the order passed by the appellate authority, the appellant has a remedy of filing an appeal before the GST Tribunal, which is yet to be constituted in the State of West Bengal. The appellant, therefore, would contend that the limitation would start to run only after a notification is issued constituting the Tribunal.

3. We are not persuaded to accept the said submission. However, we are also not able to convince ourselves with regard to the conclusion arrived at by the learned Single Bench in dismissing the writ petition solely on the ground of delay of 3 and $\frac{1}{2}$ years. We are convinced to say so that the dispute is a

classification dispute as to whether the product manufactured and marketed by the appellant is a carbonated beverage with fruit juice or a carbonated beverage.

4. The issue being a recurrent issue and the Tribunal being the last fact finding authority, in our view, the appellate remedy before the Tribunal is not only efficacious but an effective remedy as well. Since the Tribunal is yet to be constituted, the appellant having left with no other remedy is compelled to approach this Court invoking its jurisdiction under Article 226 of the Constitution of India.

5. Delay and laches are not to be calculated solely by the length of the time taken by the party to approach the legal forum. It is elementary principle that none stands to benefit by lodging an appeal or a petition belatedly. Unless and until there are material to show that owing to mala fide intentions and with certain ulterior motive, the petition was belated filed. We find that there is no such allegation against the appellant. That apart, we also note that the appellant had deposited 10% of the disputed tax while filing an appeal before the first appellate authority and had the Tribunal been constituted and the appellant had filed an appeal before the

Tribunal, it would have deposited further 20% of the disputed tax.

6. As mentioned above, the dispute being one of classification of goods manufactured and marketed by the appellant, an adjudication is required to be done for which unless the respondents file their affidavit, the Court will not be in a position to give a binding decision.

7. Thus, considering the peculiar facts and circumstances of the case, this Court is of the view that the writ petition should be heard and decided on merits rather being rejected on the ground of delay and laches. However, to be entitled to such benefit, the appellant is put on certain conditions.

8. In the result, the appeal is allowed and the writ petition is restored to the file of this Court with a direction to the appellant to pay 20% of the balance disputed tax within a period of six weeks from the date of receipt of the server copy of this judgment and order and also furnish a bond to the satisfaction of the appropriate authority for the balance amount of the disputed tax.

9. If the above two conditions are complied with, the appellant will be entitled to be heard in the writ petition for which an affidavit-in-opposition is directed to be filed by the

appropriate respondent within a period of 12 weeks from the date on which the appellant complies with the aforementioned conditions.

10. If the aforementioned conditions are complied with, no coercive action can be taken against the appellant for recovery of balance amount of tax, penalty and cess.

11. It is made clear that we have not gone into the merits of the matter while deciding this appeal.

12. There shall be no order as to costs.

13. 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)