28.04.2023
Item No.5
gd/ssd

MAT/670/2023
IA NO: CAN/1/2023
MOHAMMAD SIKANDAR ALI
VS
THE ASSISTANT COMMISSIONER, STATE TAX,
SILIGURI CHARGE AND ORS.

Mr. Himangshu Kr. Ray,
Mr. Paban Kr. Ray,
Mr. Nitish Bhandary,
Ms. Shiwani Shaw
..for the Appellant.

Md. T.M. Siddiqui,
Mr. D. Ghosh,
Mr. N. Chatterjee,
Mr. D. Sahu,
Mr. V. Kothari
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order dated 11.04.2023 passed by the learned Single Bench in WPA 6923 of 2023 refusing to grant any interim order while entertaining the writ petition challenging an order passed by the appellate authority rejecting the appeal filed by the appellant as against the demand of tax on the ground of limitation.

2. At the request of the learned advocates on either side, the writ petition itself is taken up for hearing along with this appeal.

3. Certain facts are not in dispute. Show cause notice was issued on 22.09.2021 stating that

there is short payment of tax and the assessee was directed to produce certain documents as evidence in support of his claim on the date mentioned in the show cause notice. The assessee did not reply to the show cause notice nor produced any documents. The excuse given by the assessee is not acceptable. On account of this, an order was passed on 26.11.2021 determining the tax liability under both the Central and the State Act and after the assessee's bank account was attached, the appeal was preferred by the asseseee before the Senior Joint Commissioner of Revenue, Commercial Taxes, Siliguri Circle. There is a delay of 297 days in filing the appeal. After extending the benefit of the order passed by the Hon'ble Supreme Court, yet there was a delay of 114 days. Obviously, the appellate authority is not empowered to condone the delay beyond a period of three months as there is a statutory embargo in terms of Section 107(1) of the GST Act, 2017. Therefore, the appeal was rightly dismissed.

4. In this situation, it has to be seen as to what remedy the assessee would be entitled to. What we notice is that the assessee had already paid tax at the rate of 12% on the ground that he is a government contractor, but the demand has been raised by computing the tax as 18% for the reason

that the assessee did not produce any document before the assessing officer to establish that he was a registered government contractor.

5. The assessee having paid tax at the rate of 12% at the time of filing returns and also paid the 10% of the disputed tax as pre-deposit at the time of filing the appeal, we are of the view that one more opportunity can be granted to the assessee to produce proof to show that he is a registered government contractor. However, this opportunity shall be subject to condition.

6. In the result, the appeal and the writ petition are disposed of by setting aside the orders passed by the appellate authority and remanding the matter back to the original authority, namely, the Assistant Commissioner, SGST, Siliguri Charge, Siliguri with a condition that the appellant shall pay a further sum of Rs.1 lakh and upon such payment, the said assessing officer shall consider the documents which the assessee may produce and examine as to whether the assessee was right in computing the tax at 12% and after considering all the documents and affording an opportunity of personal hearing of the assessee, the assessing officer is directed to pass fresh orders on merits and in accordance with law. If the assessee failed to comply with the above condition within the time stipulated, the benefit of

this order will not enure in favour of the assessee and the appeal shall automatically stand dismissed without further reference to this Court. If the assessee complies with the above condition within a period of two weeks from the date of receipt of the server copy of this order, the attachment of the assessee's bank account shall be lifted.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)