

01.12.2023
Item No.5
Ct. No.1
RP/KS

M.A.T. 1770 of 2023
With
IA No. CAN 1 of 2023
Sunita Bissa
Vs.
Assistant Commissioner of Revenue, Bureau of Investigation,
South Bengal Howrah Zone & Ors.

Mr. Anil Dugar
Mr. Rajarshi Chatterjee
.....for the Appellant
Mr. Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddiqui
Mr. Tanmoy Chakraborty
Mr. S. Sanyal
.....for the State

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 28th August, 2023 in W.P.A. No.19938 of 2023. The order impugned in the said writ petition is an order of adjudication passed by the Assistant Commissioner of Revenue, Bureau of Investigation, Howrah Zone dated 10th July, 2023 by which the penalty, which was imposed on the appellant by a demand dated 31st May, 2023 was affirmed. The petitioner had approached this Court on an earlier occasion and the said writ petition being, WPA No.13936 of 2023 was disposed

of by order dated 28th June, 2023 directing the adjudicating authority to consider the case of the appellant by taking into consideration the Trade Circular No.54 of 2018 dated 31st December, 2018. Pursuant to such direction, the order has been passed, which was impugned in the writ petition. The appellant claimed that they are the owners of the goods, which were intercepted and which have been seized by the department. The authority disbelieved the stand taken by the appellant on the ground that the appellant is a non-existing dealer as he is not doing any business in the declared place and the registration certificate of the firm was cancelled with effect from 29th April, 2023 on the ground that the registration was obtained by means of fraud, willful misstatement and suppression of facts.

2. The appellant's case is that on the date when the tax invoice was raised, the registration of the appellant was valid and the ground now which have been put against the appellant is on account of a retrospective cancellation of the registration. Therefore, it is

submitted that the appellant was rightful owner of the goods on the date when the tax invoice was raised and the authority ought not to have imposed 100% of the value of the goods as penalty.

3. The learned Single Bench by the impugned order dismissed the writ petition on the ground that the order is an appealable order. This observation undoubtedly is right and as several disputed questions of fact are involved, the appellant was rightly relegated to the appellate authority to challenge the order dated 10th July, 2023.
4. The learned advocate for the appellant would contend that the goods were seized from May, 2023 and were lying with the department and by efflux of time, the goods will become unfit for human consumption and, therefore, the Court may pass appropriate orders so that the goods are released.
5. We have heard the learned Additional Government Pleader on the above submission.
6. Considering the fact that the goods were lying in the department from May, 2023, appropriate directions can be issued for release of the goods subject to

conditions. We also take note of the submission made by the learned advocate for the appellant that the appellant has already filed an application for revocation of the order cancelling the registration certificate of the appellant and the same is also pending before the authority.

7. In the light of the above, the appeal stands disposed by directing the appellant to pay 25% of the penalty, which was demanded in the demand dated 31st May, 2023 and furnish a bond for the remaining amount. Upon complying with the twin conditions, the authority concerned shall release the goods in favour of the appellant along with the vehicle, which has also been detained by the respondents. It is made clear that the release of the goods should not be construed that this Court has agreed with the submission of the appellant that the appellant is the owner of the goods. So far as the correctness of the order passed by the Assistant Commissioner of Revenue dated 10th July, 2023, the appellant is directed to file an appeal before the appellate authority within a period of 30 days from the date of

receipt of the server copy of this order. If such appeal is filed, the appellate authority shall take up the appeal for consideration without rejecting the same on the ground of limitation and also not insist upon any pre-deposit, as this Court has directed the petitioner to pay 25% of the penalty, which is demanded vide demand dated 31st May, 2023. The authority before whom the application for revocation of the order cancelling the appellant's registration has been filed shall also take into consideration such revocation application at an early date preferably within a period of 30 days.

8. Accordingly, the appeal stands disposed of.
9. This order is being passed considering the peculiar facts and circumstances of the case and shall not be treated as a precedent.
10. No costs.
11. 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)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)