

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 221 of 2023

with

IA No. CAN 1 of 2023

Car Chassis Carriers Private Limited & anr.

vs.

Assistant Commissioner, College Street and Sealdah Charge

Appearance:

For the Appellants : Mr. Vinay Shraff
Ms. Priya Sarah Paul

For the state : Mr. S. Mukherjee
Mr. D. Ghosh

Heard on : 22.03.2023

Judgment on : 22.03.2023.

T.S. Sivagnanam J.:

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 7th February, 2023 passed in WPA 2616 of 2023 by which the learned Single Bench declined to grant any interim order but directed affidavits to be filed. The appellant is being aggrieved by such order has filed the present appeal.

2. The learned advocates for the parties pray that the writ petition can be taken up for consideration along with the appeal. Accordingly, the writ petition as well as the appeal is taken up for hearing to be decided.

3. We have heard the learned advocates for the parties at length.

4. The short issue which falls for consideration is as to whether the respondent department could have directed the appellant/assessee to reverse the input tax credit against the supply on the ground that they have purchased materials from a dealer whose registration has been cancelled. Admittedly, the details of such cancellation has not been furnished to the appellant. In any event, the appellant having availed the input tax credit against the inward supply cannot be directed to reverse the input tax credit by way of an email communication without mentioning as to what was the basis of the cancellation of registration of the selling dealer.

5. Mr. Shraff, learned counsel for the appellant refers to various decisions of the Courts including the decision of the Hon'ble Supreme Court of India for the proposition that even assuming that a selling dealer's registration is cancelled, the same will not automatically give right to the department to direct the purchasing dealer to reverse the input tax credit. Again in this regard, reliance is placed on the judgment passed in the case reported in (1998) 109 STC 439.

6. In our considered view, we need not travel far to examine the correctness of the direction issued by the respondent department to the

appellant as mentioned above without furnishing any details to the appellant, the respondent could not have directed reversal of the input tax credit, which was availed by the appellant and we are informed that the appellant was compelled to pay the amount and without prejudice to their rights have paid the amount. In our view, the procedure adopted by the authority for directing reversal of the input tax credit and thereafter compelling the appellants to pay the amount is not sustainable in the eye of law but will be in violation of the principles of natural justice. Therefore, we are fully convinced that the manner in which the respondent authority directed the appellants to reverse the input tax credit by way of an email dated 20th December, 2022 is not tenable in law.

5. For the above reasons, both the appeal and the writ petition are allowed and communication sent by the authority by an email dated 20th December, 2022 is set aside with a direction to the authority to remit the amount of input tax credit which was reversed by the appellant on effecting payment without prejudice to their right by transmitting the same amount in the appellants' electronic credit ledger. This shall be complied with within a period of 10 days from the date of receipt of the server copy of this order. Needless to mention, it is always open to the respondent department to initiate appropriate action in accordance with law, if so advised.

6. There will be no order as to costs.

6. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)