

Item No.4.

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

HEARD ON: 20.01.2023

DELIVERED ON: 20.01.2023

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.2004 of 2022

with

I.A. No.CAN 1 of 2022

Vishal Kumar Arya.

Vs.

Assistant Commissioner, State Tax, Ultadanga Charge & Ors.

Appearance:-

Mrs. Rita Mukherjee,

Mr. Ghanshyam Jha,

Mr. Rowsan Kr. Jha

...

for the appellant.

Mr. T. M. Siddique,

Mr. Debasish Ghosh,

Mr. Nilotpal Chatterjee

Mr. D. Sahu

...

for the State.

JUDGMENT

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

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 21st November, 2022 in W.P.A. No.21605 of 2022. The said writ petition was filed challenging an order passed by the authority under Section 74(9) of the WBGST Act, 2017 dated 21st June, 2022. The adjudicating authority had initially issued show cause notice to which the appellant had submitted his reply and the personal hearing was fixed on 20th June, 2022. Further, it appears that the appellant did not appear on the said date and it is stated that due to inadvertence, they overlooked the date and immediately on 21st June, 2022 submitted a representation tendering unconditional apology and requesting that they may be granted one more chance to appear before the authority and submit documents as was called upon to the appellant by the adjudicating authority. However, on 21st June, 2022, an order has been passed.

2. Considering the fact that the input tax credit has been denied to the appellant on the ground that the registration of the other end dealer was cancelled and according to the appellant, there were sufficient documents to show that the transactions done by them are genuine, we are of the view that

one more opportunity should be granted by the adjudicating authority and decision should be taken on merits after considering the documents that may be placed by the appellant before the authority.

3. Therefore, we are inclined to remand the matter back to the authority for fresh consideration.

4. In the result, the appeal stands disposed of by directing the appellant to treat the order dated 21st June, 2022 as a show cause notice and a reply / further reply shall be submitted by the appellant not later than 10th February, 2023 along with all supporting documents in support of the contentions raised by the appellant. On receipt of the said reply and the documents, the adjudicating authority shall fix the date for personal hearing and on the said date, the appellant shall appear without seeking for any adjournment and make his submissions and the adjudicating authority shall consider the explanations offered and the documents and pass a speaking order on merits and in accordance with law.

5. There shall be no order as to costs.

6. 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)