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RP
AN

18.02.2022
Ct. No. 16

MAT 1331 of 2021
With
IA No. CAN 1 of 2021

Deputy Commissioner, Bureau of Investigation South Bengal
vs.
Nidhi Madhogaria & ors.

Mr. A. Ray, learned G.P.
Mr. T. M. Siddiqui
Mr. Debasish Ghosh

... for the appellant State

Ms. Rita Mukherjee
Mr. Rowsan Kumar Jha
Mr. Abhijat Das

... for the respondent

This appeal has been filed by the State challenging the order dated 07.12.2021 in WPA 17612 of 2021 (Nidhi Madhogaria vs. Assistant Commissioner, Bureau of Investigation, South Bengal, Durgapur Zone).

In the above writ petition, the petitioner Mrs. Nidhi Madhogoria was the wife of late Mohit Madhogoria, who was a registered dealer under the provisions of the W.B.V.A.T. Act presently under the GST Act.

The writ petition has been filed challenging the order of detention passed by the authority detaining two trucks containing consignment of steel and other products. The order impugned before us is the interim order issued by the learned Single Judge directing release of the goods alongwith vehicle taking note of the fact that the appellant who is the wife of the deceased dealer has paid 100% of the disputed tax and further 10% of the disputed tax. The prima facie conclusion arrived at by the learned Single Judge was on account of the fact that as of now the GST Tribunal is not functional and had the avenue of

appeal been available to the appellant, the appellant would have been required to pay 100% of the admitted tax and 10% of the disputed tax for her appeal to be entertained.

Furthermore, it appears that the learned Single Judge took note of the fact that the consignment along with the vehicle have been detained since September, 2021.

Learned counsel for the State strenuously contends that in terms of Section 129 of the CGST Act, 2017, the penalty will be 200% of the tax and since the appellant is not a registered dealer, the revenue cannot take steps to recover the balance and, therefore, the appellant should be put on further terms by directing her to execute a bond and also other means to secure the interest of revenue.

Learned counsel for the respondent submits that the respondent's husband was a registered dealer under the GST Act and he had an untimely death and the respondent is taking steps to register herself as a dealer in the place of her husband and as on date she has stepped into the shoes of her husband.

Learned counsel has drawn our attention to Section 93 of the W.B.GST Act, 2017 which speaks of the liability of the legal representatives of the other persons in the case of death of a registered dealer.

In our considered view, the technical objection raised by the appellant has to be agitated before the learned Single Judge as the appellant has been given an opportunity to file an affidavit-in-opposition. All that is required to be seen is whether the interest of revenue has been reasonably safeguarded. In our considered view, the respondent having paid the 100% of the admitted tax and further 10% of the disputed tax, the interest of revenue has been safeguarded, for the present.

We make it clear that this order should not be treated as a precedent as this court has not interpreted the provisions of Section 129 of the Act and rendered this decision. The decision is based on facts after noting that the respondent is the wife of the deceased dealer and also that she is yet to be formally recognized as a dealer by substituting her name in the Registration Certificate for which specified procedure has to be followed. Therefore, this order shall not be treated as laying down a legal principle or treated as a precedent.

In the light of the above, the instant appeal and the connected application are dismissed. The appellant is directed to comply with the order passed by the learned Single Judge not later than 3 P.M. on 22.02.2022.

The appellant is entitled to raise all issues in the writ petition wherein liberty has been granted to file affidavit-in-opposition. Equally, the respondent is also entitled to file reply thereto.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

24.02.2022
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**MAT 1331 of 2021
With
I.A. No.CAN 1 of 2021**

**Deputy Commissioner, Bureau of Investigation, South
Bengal, Durgapur Zone
Vs.
Nidhi Madhogaria & Ors.**

Mr. Anirban Ray, Ld. G. P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh .. for the State / appellant.

Ms. Rita Mukherjee,
Mr. Abhijat Das ... for the respondent no.1

This matter is listed under the caption "To Be Mentioned".

It is pointed out by the learned counsel appearing for the respondent no.1 that certain typographical errors have occurred in the order dated 18th February, 2022 in the 2nd, 3rd and 8th paragraph. Accordingly, the corrections are effected in the following manner:-

(a) In paragraph 2, the words "provisions of the W.B.V.A.T. Act presently under the" shall be deleted.

(b) In paragraph 3, instead of "100%", it shall be mentioned as "20%" and the word

“admitted” shall be substituted by “balance disputed”.

(c) In paragraph 8, the word “admitted” shall be substituted by the word “disputed”.

The above corrections be carried out and a fresh copy of the order be issued and this order shall form part of the order dated 18th February, 2022.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

S/L 59
07.12.2021
Court. No. 2
cm

WPA 17612 of 2021

Nidhi Madhogaria

Vs.

Assistant Commissioner, Bureau of Investigation South
Bengal, Durgapur Zone & Ors.
(Through Video Conference)

Ms. Rita Mukherjee

Mr. Abhijat. Das

... For the petitioner.

Mr. A. Ray, Ld. GP.

Md. T.M. Siddiqui

Mr. D. Ghosh

... For the Respondents.

Affidavit of service filed in court today be kept with
the record.

Heard the learned advocates appearing for the
parties.

In this matter, petitioner has challenged the
impugned action on the part of the GST authority
detaining the vehicles in question with goods on the
ground of violation of relevant provision of State GST
Act. Final adjudication order has been passed and
against the said adjudication order, petitioner has
preferred an appeal also before the Appellate Authority,
which has upheld the adjudication order imposing the
tax of Rs. 4,28,760/- and penalty of Rs. 23,82,000/-.

Learned advocate appearing for the petitioner
submits that the impugned order of the Appellate
Authority is further appealable under the statute but
now the said forum of Tribunal is not available and the
petitioner submits that it has already made pre-deposit

of the amount of the disputed demand at the time of filing the appeal before the Appellate Authority. Now petitioner challenges the impugned order of the Appellate Authority and prays for interim order of release of the vehicle in question with goods on it.

Considering the submission of the parties, I am of the view that since no further Appellate forum is available at present against the impugned order of the Appellate Authority, this writ petition should be admitted and the issues involve in this writ petition require affidavit from the respondents for final adjudication.

So far as the release of the detained vehicle with the goods is concerned, that shall be released by the respondents concerned on condition of making deposit of further amount of tax of Rs. 4,28,760 /- determined, within two weeks from the date, and if such amount is deposited with the authority concerned, the vehicle in question along with goods shall be released by the respondent within three days from the date of receipt of such deposit and subject to compliance of other formalities.

Let the respondents file affidavit-in-opposition within two weeks after the Christmas vacation; reply thereto, if any, to be filed by the petitioner within one week thereafter.

List this matter for final hearing after five weeks after vacation.

At the time of hearing, both parties should be ready with the short written notes of arguments.

(Md. Nizamuddin, J.)