

Form No. J.(2)
Item No.3

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

HEARD ON : 16.06.2023

DELIVERED ON: 16.06.2023

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNAMAM
AND
THE HON'BLE MR. JUSTICE UDAY KUMAR**

**M.A.T. No.823 of 2023
With
IA No. CAN 1 of 2023**

**Liakhat Ali Mallick
Vs.
The State of West Bengal & Ors.**

Appearance:-

**Mr. Avra Mazumder
Mr. Suman Bhowmik**

.....For the Appellant

**Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddiqui
Mr. Saptak Sanyal**

.....For the State

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 27th April, 2023 in W.P.A. No.7454 of 2023. The appellant had

challenged the garnishee notice dated 13th February, 2023 on the ground that the appellant has paid the entire tax as demanded and has also preferred an appeal before the appellate authority and before the expiry of the period for filing the appeal, the garnishee notice was issued.

2. The learned Single Bench has granted stay of the garnishee notice but has imposed a condition that the appellant has to deposit 20% of the interest liability, which was originally quantified as Rs.31,58,936/-, subsequently rectified as Rs.29,85,527/-.
3. In terms of Section 107(7) of the CGST Act read with Section 107(6) for preferring an appeal, the aggrieved assessee is required to deposit 10% of the disputed tax. It is not in dispute that the appellant has paid the entire tax, which has been noted in the order dated 19th December, 2022 passed under Section 73(9) of the W.B.G.S.T. Act, 2017, which shows that the appellant/petitioner has paid the tax of Rs.74,69,348.00.
4. Considering the facts and circumstances of the case and also the statutory requirement, which mandates payment of only 10% of the disputed tax, we are of the view that a condition need not be imposed by directing the appellant/petitioner to pay 20% of the interest.
5. Accordingly, the appeal is allowed and that portion of the order passed by the learned Single Bench directing the appellant to pay 20% of the interest amount is set aside and direction is issued to the appellate authority to consider the appeal filed by the appellant on merits and in accordance with law after affording an opportunity of personal hearing.
6. There shall be no order as to costs.

7. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNAM)
CHIEF JUSTICE

I agree,

(UDAY KUMAR, J.)

Pallab/KS AR(Ct.)