09.06.2022
Item no. 37
Court No.1
(AD)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

(Through Video Conference)

MAT 15 of 2022

Nipika Agarwal Proprietress of S.N. Trading
Vs.
Assistant Commissioner of State Tax, Cooch Behar & Ors.
With
IA No: CAN 1 of 2022

Mr. Sandip Choradia
Ms. Esha Acharya
... for the Appellant.

Mr. Hirak Barman
Mr. Bikramaditya Ghosh
... for the State.

The appeal is directed against the order dated February 9, 2022 passed in WPA 1745 of 2021. By the impugned order, the learned Judge was pleased to hold that, despite the assessee receiving further evidences with regard to the quantum of tax liability subsequent to the conclusion of the order of refund, there was no material irregularity in the order of refund warranting interference under Article 226 of the Constitution of India.

Learned Advocate appearing for the appellant/writ petitioner submits that the order of refund was passed on May 3, 2021. Subsequent thereto, the assessee received Certificate of Export of August 25, 2021. There was no lacuna on the

part of the assessee in receiving the Certificate. If such Certificate is placed before the revisional authority, the petitioner will be entitled to refund of the tax liability of the petitioner. The Certificate is a material evidence which the revisional authority needs to consider in order to assess the tax liability of the petitioner.

Learned Advocate appearing for the appellant/writ petitioner submits that the tax authorities cannot derive undue benefit of circumstances which are beyond the control of the appellant/writ petitioner. The tax authorities are obliged to give actual credit for the tax paid. The document dated August 25, 2021 pertains to the liability of tax relating to the appellant/writ petitioner and, therefore, ought to be taken note of by the tax authorities. In the event the impugned order is allowed to stand in the manner of form as it stands today then the appellant/writ petitioner will be deprived of the tax benefits that the appellant/writ petitioner is otherwise entitled to.

Learned Advocate appearing for the State submits that the adjudication of tax liability stood completed on the passing of the order of the revisional authority.

No doubt, the revisional authority passed an order assessing the tax liability of the

appellant/writ petitioner on May 3, 2021. However, subsequent thereto, the appellant/writ petitioner received the document dated August 25, 2021 which impacts the tax liability of the appellant/writ petitioner. The appellant/writ petitiner is not at all fault in not receiving the document dated August 25, 2021 that the appellant/writ petitioner seeks to place before the revisional authority. It is not a case that the appellant/writ petitioner was in possession of certain documents which the appellant/writ petitioner did not place before the revisional authority. Rather, it is a case where the appellant/writ petitioner received a document subsequent to the order of the revisional authority.

Tax authorities are to adjudicate upon the tax liability in accordance with law. The liability to taxation in respect of assessee should not escape assessee and likewise where the assessee was not in a position to show certain evidences which impacts the tax liability, reasonable opportunity should be afforded to such assessee to bring such evidences to the notice of the tax authorities.

In such circumstances, we are of the view that another opportunity should be granted to the appellant/writ petitioner to place the document

dated August 25, 2021 before the revisional authority.

The appellant/writ petitioner is at liberty to approach the revisional authority within fortnight from date with regard to the order of assessment dated May 3, 2021. If so approached, the revisional authority is requested to reconsider its order passed on refund taking into account the document dated August 25, 2021 in accordance with law.

With the above observations, **MAT 15 of 2022** along with **IA No: CAN 1 of 2022** is disposed of accordingly.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)