

Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 22.04.2022.

DELIVERED ON:22.04.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

FMA 297 of 2022

With

I.A. No.CAN 1 of 2022

Ideal Unique Realtors Private Limited & Anr.

VERSUS

The Union of India & Ors.

Appearance:-

Mr. Sandip Choraria,

Mr. Rajarshi Chatterjee,

Mr. Himangshu Kr. Ray

.....for the appellants.

Mr. Vipul Kundalia,

Mr. Sukalpa Seal,

Mr. Anurag Roy

.. for the respondent nos.2 & 3.

JUDGMENT

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

1. This intra Court appeal is directed against the order dated

22nd November, 2021 in W.P.A. No.15695 of 2021. The

appellants /writ petitioners challenged the jurisdiction of the 7th respondent, the Sr. Audit Officer / SSCA-FAP-4 in issuing two communications both dated 22nd March, 2021 enclosing a memo called as "spot memo". The appellants questioned the action of the 7th respondent in the writ petition, firstly, on the ground that there is no jurisdiction for the audit department to issue such a notice and in this regard, places reliance on the decision of the High Court of Bombay in **Kiran Gems Private Limited - Vs. - Union of India** reported in **2021 SCC OnLine Bom 98**. This decision was relied on for the proposition that the Central Excise Revenue Audit (CERA) cannot conduct audit of records of a private entity apart from stating that the appellants have pointed out that for the self-same reason three earlier proceedings were commenced firstly by CGST Department, Park Street Division, Kolkata vide letter dated 15th May, 2018 for which the appellants had submitted their reply on 15th June, 2018 along with the documents called for. For the very same purpose, the Director General of Goods and Services Tax, DGGI, Kolkata, Zonal Unit had issued summons dated 11th July, 2018 for which the appellants had submitted their reply on 24th July, 2018. Thereafter, DGGI issued notice dated 15th November, 2019 and thereafter another notice dated 18th November, 2019 was

issued by the 5th respondent and summons dated 2nd January, 2020 for which the appellants have responded and submitted the requisite documents.

2. The appellants appeared before the authority in response to the summons on 14th January, 2020 and stated to have submitted the requisite documents. In spite of the same, the Superintendent, Range - III, Park Street Division, CGST & CX, Kolkata South Commissionerate had issued two communications dated 22nd March, 2021 enclosing two spot memos.

3. The question would be whether the appellants can be dealt with in such a fashion by the respondents department. From the records placed before us, we find that none of the proceedings initiated by the department has been shown to have been taken to the logical end. If, according to the respondents department, there is an irregularity in the availabilment of credit, then appropriate proceedings under the Act should be initiated and after due opportunity to the appellants, the matter should be taken to the logical end.

4. We find that such a procedure had not been adopted in the instant case and the appellants appears to have been dealt with in a most unfair manner in the sense that from the year 2018 for the very same TRAN - 1 issue the appellants have repeatedly been summoned, issued notices etc. The spot memos, which have been communicated to the appellants along with the communications dated 22nd March, 2021 is also for the very same purpose.

5. Thus, it is not clear as to why different wings of the very same department have been issuing notices and summons to the appellants without taking any of the earlier proceedings to the logical end.

6. Therefore, on that ground, we are of the view that the spot memos, which have been furnished along with the communications dated 22nd March, 2021 cannot be enforced. However, we make it clear that the issue whether CERA audit can be conducted against a private entity as contended by the appellants is not gone into as this Court is of the view that it is too premature for the Court to give a ruling on the said issue. This is more so because the authorities have not taken forward the proceedings, which they have initiated earlier from May, 2018.

7. Therefore, it is appropriate for the concerned authority to take the proceedings to the logical end after affording an opportunity of personal hearing to the appellants.

8. From the records placed before us, we find that there is no allegation against the appellants that they have not cooperated with the department in not responding to the summons issued earlier. Conveniently, the communications dated 22nd March, 2021 issued by the Superintendent, Range - III, Park Street Division, CGST & CX does not refer to any of the earlier proceedings, which have been initiated against the appellants.

9. For the above reasons, the writ appeal is allowed to the extent indicated. The spot memos enclosed with the communications dated 22nd March, 2021 are quashed and there will be a direction to the 5th respondent, namely, Additional Assistant Director, DGGI, Kolkata, Zonal Unit to consider the reply submitted by the appellants dated 14th January, 2020 along with the earlier reply given by the appellants dated 15th June, 2018 and 24th July, 2018. The authorised representative of the

appellants shall be afforded an opportunity of personal hearing and a decision be taken on merits and in accordance with law.

10. The appeal along with connected application are disposed of.

11. No costs.

12. 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)