(2022) 11 CAL CK 0086

In the Calcutta High Court

Case No : M.A.T No.1469, 1470 Of 2022, I.A. No.CAN 1 Of 2022

M/S. Kolkata Bricks Pvt. Ltd. APPELLANT

Vs

Additional Commissioner, Central Tax, CGST & CX, Kolkata North Commissionerate & Ors. RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Citation : (2022) 11 CAL CK 0086

Hon'ble Judges : T. S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Anil Kumar Duggar, Rajarshi Chatterjee, K. K. Maiti,

Final Decision : Dismissed

Judgement

1. Since the issues involved in these appeals are common and germane, both the appeals are disposed of by this common judgment and order. For the sake of convenience, we take up MAT 1469 of 2022 for discussion.

2. This intra Court appeal filed by the writ petitioner is directed against the order dated 11th August, 2022 passed in W.P.A. No.15451 of 2022. In the said writ petition, the appellant had challenged the order passed by the Commissioner (Appeals), CGST & CX (Appeal-I) (hereinafter referred to as the "Commissioner (Appeals)" dated 28th June, 2019. The order is a common order in two appeals; one filed by the appellant and the other filed by the department.

3. The appeals before Commissioner (Appeals) were dismissed on the ground of non-compliance of the mandatory pre-deposit as there was a short payment of the said pre-deposit. The appellant would contend that the department's appeal was time-barred and could not have been entertained. The Commissioner (Appeals) by a separate order dated 12th October, 2021 had allowed the said appeal. The orders dated 12th October, 2021 and 28th June, 2019 were impugned in the writ petition.

4. It is an admitted fact that notice was not served on the appellant before the

appeal was decided. The notice sent by the department had returned with the endorsement “left”. In such circumstances, the Act provides for different modes of substituted service and one of such modes, which was required to be exercised by the department was to serve notice by affixature. This procedure having not been adhered to, the appellant cannot be faulted for not appearing before the Commissioner (Appeals) in his appeal or in the department’s appeal.

5. Therefore, we are of the considered view that for an effective adjudication, the party should be heard in the matter; either it is the assessee or the department. Failure to afford an adequate opportunity of hearing would be in violation of the principles of natural justice.

6. Therefore, we are inclined to set aside the orders passed by the Commissioner (Appeals) and remand the matter for fresh consideration after affording an opportunity of hearing to the appellant. However, the appellant cannot pursue his appeal unless and until he complies with the payment of mandatory pre-deposit. As could be seen from the order dated 28th June, 2019 passed by the Commissioner (Appeals), first the appellant, namely, M/s. Kolkata Bricks Pvt. Ltd. is required to pre-deposit Rs.9,30,017/- and its Director, Sri Pravin Kumar Darolia has to deposit an identical sum. However, both the appellants have only deposited Rs.25,000/- each. Therefore, the shortfall has to be made good.

7. In the light of the above discussion, the appeals are allowed. Consequently, the order passed in the writ petition is set aside and the orders passed by the Commissioner (Appeals) dated 28th June, 2019 and 12th October, 2021 are aside and the matter is remanded back to the Commissioner (Appeals) for fresh consideration. The appellants are directed to make good the shortfall in the pre-deposit within two weeks from the date of receipt of the server copy of this judgment and order and on such compliance, the Commissioner (Appeals) shall hear both the appeals together, i.e, the appeal filed by the appellant and the appeal filed by the department and after affording an opportunity to both the parties, fresh orders be passed on merits and in accordance with law.

8. If the appellants fail to comply with the above direction within the time stipulated, the benefit of this judgment and order will not enure in favour of the appellants and the appeals will stand automatically dismissed without reference to this Court.

9. There will be a direction to the appellate authority to serve notice not only on the appellant / company but also on the Director against whom proceedings have been initiated as the Director has also filed an independent appeal before the Commissioner (Appeals).

10. There shall be no order as to costs.

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