

Item No.11.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 06.09.2022

DELIVERED ON:06.09.2022

CORAM:

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

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

F.M.A. No.1017 of 2022

With

I.A. No.CAN 1 of 2022

Vijay Jaiswal

Vs.

**The Assistant Commissioner, Shyambazar,
West Bengal Goods and Services Tax & Ors.**

Appearance:-

Ms. Rita Mukherjee,

Mr. Abhijat Das

... for the appellant.

Mr. Rananjay Chatterjee,

Mr. Tapan Bhanja,

Mr. Aveek Biswas

..... for the Union of India.

Mr. Anirban Ray, Ld. G. P.,

Mr. T. M. Siddique,

Mr. Debasish Ghosh,

Mr. D. Sahu

... for the State.

Ms. Rajashree Venket Kundalia,

Ms. Ekta Sinha

.... For the CGST Authorities.

JUDGMENT

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

1. This intra-Court appeal at the instance of the writ petitioner is directed against the order dated 11th May, 2022 passed in W.P.A. No.7690 of 2022, by which the prayer for interim relief was not granted by the learned Single Bench. Aggrieved by the same, the writ petitioner is before us by way of this appeal.

2. We have heard Ms. Rita Mukherjee, learned advocate assisted by Mr. Abhijat Das, learned advocate for the appellant and Mr. T.M. Siddique, learned standing counsel led by Mr. Anirban Ray, learned Government Pleader appearing for the State, Mr. Bhanja, learned advocate for the Union of India and Ms. Rajashree Venket Kundalia, learned advocate for the CGST authorities.

3. After we have heard Ms. Rita Mukherjee for a considerable length of time, it was pointed out that the relief sought for in the writ petition was challenging the *vires* of Rule 86A of the Central Goods and Services Tax Rules, 2017 and if that be so, the prayer for grant of the interim order pending consideration of such declaratory relief would not arise. Faced with such situation, the learned advocate appearing for the appellant would submit that the appellant would be ready to give up the prayer to challenge the constitutional validity of Rule 86A but the request of the appellant to withdraw the blocking of the

electronic credit ledger and restoration of the input tax credit may be directed to be considered before which, the reasons which weighed in the mind of the concerned authority before passing the order blocking the electronic credit ledger should be made known to the appellant and after hearing the appellant, an order has to be passed.

4. We have heard the learned Government counsel on the above submission. In the light of the submission made by the learned advocate appearing for the appellant, we are inclined to dispose of the writ petition as well as the appeal by this common order.

5. The concession made by the learned advocate for the appellant on behalf of the appellant is placed on record and the prayer for declaration of Rule 86A of the said Rules as *ultra vires* is struck off. The other prayer made by the appellant/writ petitioner is to withdraw the blocking of the electronic credit ledger and restore the input tax credit. Such positive direction cannot be granted at this stage as the appellant does not know as to what are the reasons, which weighed in the mind of the appropriate authority before passing the order blocking the electronic credit ledger. In our considered view, the following order will meet the ends of justice and simultaneously protect the interests of revenue as well.

6. In the result, the writ petition as well as this appeal and the connected application are disposed of by directing the appropriate authority to intimate to the appellant within ten days from the date of receipt of server copy of this judgment and order the reasons for which the electronic credit ledger of the appellant was blocked along with the information as to which authority had passed such an order. On receipt of such reasons, the appellant is entitled to file his objections within seven days therefrom after which the concerned authority shall afford an opportunity of personal hearing to the appellant or his authorised representative and pass a speaking order on merits and in accordance with law as expeditiously as possible but preferably within a period of two weeks from the date on which the personal hearing is concluded.

7. No order as to costs.

8. 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, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)