09.04.2024
Item No.7
gd/ssd

MAT/424/2024
IA NO: CAN/1/2024
M/S EVERGREEN CONSTRUCTION AND ANR.
VS
THE COMMISSIONER OF COMMERCIAL
TAXES GOVERNMENT OF WEST BENGAL AND ORS.

Ms. Ritika Kurmy,
Mr. D. Dutta,
Mr. Dev Agarwal
..for the Appellants.

Md. T.M. Siddiqui,
Mr. T. Chakraborty,
Mr. S. Sanyal
..for the State.

1. This intra court appeal by the writ petitioner is directed against an interim order dated 25.01.2024 passed in WPA 28330 of 2023 by which the appellants were directed to deposit 20% of the disputed remaining unpaid interest within a time frame.

2. The learned advocate for the appellants contended that in terms of Section 112 of the GST Act if the appellants were to approach the appellate tribunal in terms of sub-section (8) of Section 112 the registered taxpayer within RTP is required to pre-deposit a sum equal to 20% of the remaining amount of tax in dispute in addition to the amount paid under sub-section (6) of Section 107 arising from the said order. It is submitted that in the instant case the challenge in the writ petition is to an adjudication order passed by the authority demanding interest on the ground that the

appellants had belatedly filed the returns for the relevant financial year.

3. Since the appellate tribunal is yet to be constituted, the appellants had filed the writ petition in which the impugned order has been passed.

4. The learned Government counsel would contend that the order passed by the learned Single Bench is a discretionary order to secure the interest of revenue and there is no error in the said order.

5. The Hon'ble Supreme Court in *Union of India and Others v. Concord Fortune Minerals India Private Limited* reported in *(2018) 12 SCC 279* pointed out that High Court while deciding the writ petition filed under Article 226 of the Constitution of India should exercise its discretion consistent with the relevant provisions and in the said case the provision related to limitation.

6. In the case on hand the provision for filing an appeal before the tribunal does not contemplate payment of 20% of the disputed interest and it is specific in stating that no appeal shall be filed under sub-section (1) of Section 112 unless the appellant has paid a sum equal to 20% of the remaining amount of tax in dispute.

7. Therefore, there is a clear distinction drawn in the said provision restricting the pre-deposit amount to a sum equal to 20% of the remaining amount of tax in dispute.

8. This position is further clear and amplified if we peruse clause (a) of Section 112(8) which states that no appeal shall be filed under sub-section (1) of Section 112 unless the appellants has in full, paid such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him.

9. Thus clause (a) requires the registered taxpayer to pay the tax, interest, fine, fee and penalty arising from the impugned order which is subject matter of appeal as admitted by him.

10. Therefore, the discretion which the court can exercise has to be in terms of the provision of the statute more particularly when the appellants had filed the writ petition on account of the fact that the appellate tribunal is yet to be constituted under the Act.

11. The learned advocate for the appellants placed reliance on the decision of the High Court of Karnataka in the case of M/s Tejas Arecanut Traders v. Joint Commissioner of Commercial Taxes (Appeals) Dharwad Division, Hubli & Others reported in 2023-VIL-923-KAR wherein the court was dealing with Section 107(6) of the CGST Act which deals with appeal to appellate authority and clause (b) of Section 107(6) is in *pari materia* with clause (b) of Section 112(8) and while interpreting Section 107(6) the learned Single Bench of the High Court of Karnataka held that 10%

pre-deposit obligation is confined to the disputed tax quantum excluding penalty fee and interest. The court then proceeded to examine the legislative intent and held that the absence of any reference to disputed interest, fine, fee and penalty in Sub-clause (b) of Section 107(6) suggests a meticulous legislative choice. Reliance was placed on the decision of Hon'ble High Court in Prakash Nath Khanna v. CIT [(2004) 9 SCC 686 wherein the Hon'ble Supreme Court held that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said and where the legislative intent is clear from the language, the Court should give effect to it.

12. As noted above the legislative intent as amplified in Section 112(8)(b) of the Act clearly restricts the pre-deposit amount to 20% of the remaining amount of tax in dispute and does not speak of interest.

13. Therefore, we are of the view that the discretion to be exercised by the court should be in terms of the statute and, therefore, the said condition imposed by the learned Single Bench calls for interference.

14. For the above reasons, the appeal is allowed and that portion of the order passed by the learned

Single Bench directing the petitioners to pay 20% of the remaining interest is set aside and the respondents are directed not to initiate any recovery proceedings till the writ petition is heard and disposed of.

15. The respondents are directed to file their affidavit-in-opposition in the writ petition within three weeks from date; reply, if any, within two weeks thereafter.

16. List the writ petition before the appropriate Bench after six weeks.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)