

04-01-2022  
ct no. 13  
Sl. 4  
sp

**WPA 1642 of 2020  
(Through Video Conference)**

Budge Budge Refineries Ltd. & Anr.  
**-Versus-**

The State of West Bengal & Ors.

**Mr. Amales Ray,  
Ms. Mousumi Bhowal,  
Mr. Aman Gupta**

**....for the petitioners**

**Mr. T.M. Siddiqui,  
Mr. N. Chatterjee**

**...for the State**

**Ms. Sutapa Sanyal,  
Mr. Debrup Bhattacharjee,  
Mr. Pradeep Kumar Tulsyan**

**...for the respondent nos. 3 and 4**

**Mr. Shiv Shankar Banerjee,  
Mrs. Sanchita Barman Ray,**

**...for the respondent nos. 5, 6 and 8**

The writ petitioner no. 1 is aggrieved by order dated December 17, 2019 passed by the Additional District Magistrate (Development), South 24 Parganas being the authority under Section 17 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. The order was passed ex parte since the petitioner no.1 did not appear before the authority concerned or canvass any of the grounds raised in the writ petition.

The petitioner no.1 challenges the order on, inter alia, the grounds that the activity of the

petitioner i.e. import raw crude vegetable oil processing and thereafter selling, is not an activity within the meaning of the Act of 1972. Reference is made to a decision of the Coordinate Bench in *Shree Renuka Sugar Ltd. Vs. The State of West Bengal* reported in AIR 2014 Cal 165.

It appears from the impugned order that the nature of the activity of the petitioner, has been ascertained by the Additional District Magistrate, after receiving reports and inputs from the Superintendent of Central Tax, CGST & CX, Range-I, Budge Budge Division. There is no factual contradiction or controversion to this.

On the question alternative remedy of Appeal under the Act of 1972, counsel for the petitioner argues that the writ petition is not maintainable, since the authority below has acted completely without jurisdiction. Reference in this regard is made to the decision of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.*** reported in ***(1998) 8 SCC 1.***

One could have understood if the petitioners participated in the proceedings before the authority and had raised all the above grounds. The nature of the activity of the petitioner should have been demonstrated before the first authority, for which it had no jurisdiction

to impose agricultural tax. The petitioner no. 1 has not done so.

In that view of the matter, this Court is not inclined to apply the dicta of the Hon'ble Supreme Court on the question of alternative remedy as laid down in the ***Whirlpool Corporation*** decision (supra).

A similar view has also been taken by a Co-ordinate bench of this Court vide order dated **December 14, 2015** in **WP 25051 (W) of 2015 (Spencer's Retail Limited & Anr. vs. The State of West Bengal & Ors.)**.

The decision of another Co-ordinate Bench dated **13<sup>th</sup> August, 2014** in **WP No. 17184 (W) of 2012 (Amit Trade Centre Pvt. Ltd. Vs. State of West Bengal and Ors.)** is indeed also necessary to be considered.

Counsel for the petitioner would next argue that the provisions of appeal under Section 17D is not efficacious or alternative since the petitioner was required to deposit the entire levy as a pre-condition for the appeal being entertained.

This Court is unable to accept the said arguments since the petitioner no.1 has not even bother to appear before the authority that passed the impugned order, despite several notices.

In that view of the matter, this Court is of the view that the writ petition cannot be entertained. The petitioner no.1 must avail the provisions of appeal under Section 17D of the Act of 1972. If the petitioner no.1 approaches the Appellate Authority, within 30 days from date, the said appeal should be entertained under Section 17D of the said Act, condoning the delay that has occurred in preferring the same

For the reasons stated hereinabve, the instant writ petition is not entertained and is hereby dismissed.

It is absolutely made clear that this Court has neither entered into the merits of the case nor has dealt with the contentions raised by the petitioner on the merits of the impugned order.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**