

Item No.2.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 07.06.2022

DELIVERED ON:07.06.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**MAT 394 of 2022
With
I.A. No.CAN 1 of 2022**

**Mageba Bridge Products Private Limited.
VERSUS
Deputy Commissioner Commercial Taxes, Central Audit Unit & Ors.**

Appearance:-

**Mr. Sandip Choraria,
Mr. Sukalpa Seal**

.....for the appellant.

**Mr. Soumitra Mukherjee,
Mr. Debasish Ghosh**

.. for the respondents.

JUDGMENT

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

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 28th February, 2022 in W.P.A. No.19554 of 2019. In the said writ petition, the appellant had challenged the assessment order dated 20th December, 2011, which was upheld by the appellate authority by order dated 26th September, 2013 as well as by the revisional authority dated by order dated 17th July, 2019. The learned writ Court dismissed the writ petition on the ground that it is not inclined to interfere with the concurrent findings of the three authorities below.

2. Mr. Sandip Choraria, learned advocate appearing for the appellant would submit that one important fact has not been taken note of in a proper manner by the assessing officer, by the appellate authority as well as by the revisional authority. This fact being that the dealer, who was originally registered under the provisions of the West Bengal Value Added Tax Act was M/s. Metco Group Engineers Pvt. Ltd. The appellant before us is M/s. Mageba Bridge Products Private Limited. The registered dealer, viz. M/s. Metco Group Engineers Pvt. Ltd., (who we shall refer to as the "transferor company") stood amalgamated with the appellant, the transferee company pursuant to a scheme of amalgamation approved by this Court by an order dated 26th June, 2009. It is further submitted that in terms of the scheme of

amalgamation, it is to take effect from 1st November, 2007. Therefore, the learned Advocate for the appellant would contend that the assessment proceedings initiated by the assessing officer culminating in an order dated 20th December, 2011 could not have been passed in the name of the transferor company as on the said date the transferor company is deemed to have not been in existence. It is further pointed out that when the appeal was filed, this issue was pointed out to the appellate authority and the same was also done before the revisional authority. However, all the three authorities were of the view that no reconciliation statement has been produced, books of accounts have not been produced and therefore, the assessment was completed, which in our view is in the nature of best judgment assessment. Therefore, the appellant is before us seeking for interfering with the order passed by the authorities below.

3. The learned Senior Government Advocate submitted that the appellant, namely, the transferee company is deemed to have stepped into the shoes of the transferor company and is liable to be assessed for the period in question, which is the 4th quarter ending 2009 and they are bound to substantiate their plea by producing the necessary details and documents and having

failed to do so, no fault can be attributed to the assessing officer for having passed the order dated 20th December, 2011.

4. After we have elaborately heard the learned Advocates for the parties, we are of the considered view that partially the appellant has to be blamed for the present position. The transferor company stood amalgamated with the appellant with effect from 1st November, 2007 though the scheme of amalgamation was approved by this Court on 26th June, 2009. The period for which the assessment has been made, which is the 4th quarter ending 2009 is obviously much after the order of this Court approving the scheme of amalgamation dated 26th June, 2009.

5. Be that as it may, by operation of law, the transferor company, namely, M/s. Metco Group Engineers Pvt. Ltd. loses its identity on and after 1st November, 2007 and whatever the liabilities, which are existing as on the said date has to be borne / defended by the appellant, who is the transferee company. Therefore, the proper course the appellant should have adopted is to get itself substituted in the place of the transferor company, produce all the documents and details in support of its claim and thereafter contest the proposal made by the assessing officer and take order on merits. However, this course having not been adopted, it is only the appellant, who

has to be held responsible for the present situation. However, we are conscious of the fact that the taxes, which are lawfully due and payable to the State have to be paid and if not paid, to be collected by the State. Though the assessment was completed on 20th December, 2011, on account of the mix up the State has not been able to recover even the taxes which are lawfully liable to be recovered.

6. Considering all these aspects, we are of the view that the matter can be remanded to the lower authorities for fresh considerations.

7. In the light of the above, the writ appeal is allowed and the connected application is disposed of. The order passed in the writ petition is set aside and consequently, the order passed by the revisional authority dated 17th July, 2019 and the order passed by the appellate authority, namely, the Joint Commission of Sales Tax, Kolkata South Circle dated 26th September, 2013 are set aside and the matter is remanded to the appellate authority for fresh consideration. The appellant is directed to file a petition before the appellate authority seeking substitution of name of the appellant in place of the transferor company. Such application shall be filed within 10 days from the date of receipt of the server copy of this order.

On such application being filed, the appellate authority shall allow the application and substitute the appellant in the place of M/s. Metco Group Engineers Pvt. Ltd. This exercise has to be necessarily done on account of the fact that the registration certificate granted in the name of M/s. Metco Group Engineers Pvt. Ltd. has been cancelled with effect from 1st November, 2007 and rightly so.

8. After the appellant has been substituted, the appellate authority shall grant 7 days time to the appellant to produce all the details and documents including Form - C declaration, books of accounts, ledgers, etc. to substantiate its claim. Upon production of those documents, books of accounts and details, the appellate authority shall afford an opportunity of personal hearing to the authorised representative of the appellant and thereafter proceed to pass an order on merits and in accordance with law.

9. In the event, the appellant fails to produce the documents, details, books of accounts, Form C declaration, etc. within the time permitted by this Court, the benefit of this judgment and order will not enure in favour of the appellant and the appeal would stand dismissed without further reference to this Court

and the order passed by the appellate and revisional authorities would stand revived.

10. We further make it clear that this order will concern the period of assessment, namely 4th quarter ending 2009 as has been mentioned in the revisional authority's order.

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.)