29.07.2022.
p.b.
Sl. No.27.

W.P.A. 6768 of 2018

M/s. Venus Control and Switch Gears Pvt. Ltd.
Vs.
Deputy Commissioner of Sales Tax, Esplanade Charge & Ors.

Mr. Rajarshi Chatterjee.
........for the petitioner.

Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. D. Ghosh.
........for the State.

Heard learned counsel appearing for the parties.

By this Writ Petition petitioner has challenged the impugned special audit under Section 9 (2) of the Central Act, read with Section 43A of the VAT Act by way of issuing the notice under memo no. 3599, on the ground of alleged inherent lack of jurisdiction of the authority to conduct special audit under Central Sales Tax Act, 1956.

Petitioner submits that in the instant purported proceeding, the respondent authority assumed such authority and jurisdiction without the clear mandate of the relevant provisions of Section 9 (2) of the Central Sales Tax Act, 1956, only on the basis of Rule 11 of the CST Rule (West Bengal), 1958, whereas, the Section 13 (3) of the Central Act has clearly debarred the State authority to make any rule which is inconsistent with the substantive provision of the Act and submits that the expression 'interest' was not part of the Central Act before 1997.

Petitioner submits that under such facts and circumstances the Hon'ble Apex Court in the case of India Carbon Limited and Others –Vs- State of Assam (1997) 6 SCC 479 has held that Section 9 (2) of the Central Sales Tax Act did not enable the State Sales Tax authorities to charge interest due in absence of a substantive provision in Central Sales Tax Act for levying interest under Section 9 (2) thereof. Accordingly, the Central Legislature has duly amended Section 9 (2) of the said Act by way of inserting the expression 'interest'. Under the purview of the said judgment, the State Sales Tax authority cannot assume its jurisdiction in regard to a substantive provision of the Central Act without any specific bestowing of power under the Central Act.

Petitioner further submits that the expression as occurs in sub-section (2) of Section 9 of the Central Sales Tax Act, namely, "........ and for this purpose, they may exercise all or any of the powers they have under the General Sales Tax Law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of the business imposition of the tax liability of a person, carrying on business........" is liable to take colour from the specific proceedings as postulated in the said provision and the purported special audit proceeding under Section 43A of the VAT Act cannot be said to have included in the provisions of sub-section (2) of the Section 9 of the said Act by way of implication and without specific mention of the said proceeding in the said provision.

Petitioner submits that the authority, imposed tax by way of an illegal assumption of jurisdiction of special audit under Section 9 (2) of Central Sales Tax Act, whereas, according to the mandate of Article 265 of the Constitution of India no tax shall be levied or collected without the authority of law. Thus, by way of initiating special audit proceeding under Section 9 (2) of the Central Act, and thereby imposing tax and interest, the authority has clearly violated such mandate of Constitution of India. Such an unconstitutional action on the part of the authority should not be allowed to be sustained in the eye of law and therefore, the said special audit report is liable to be struck down.

Learned Advocate appearing for the respondents opposing this Writ Petition submits that the Commissioner of Commercial Tax, West Bengal is empowered to select any dealer for special Audit under Section 43A of the WBVAT Act, 2003 read with Rule 54A of the WBVAT Rules, 2005. In terms of Rule 11 of the CST (West Bengal) Rules, 1958 the provision of General Sales Tax of the State (WBST Act, 1994 & WBVAT Act, 2003) are to apply mutatis mutandis to all proceeding or other matter incidental to carrying out the purpose of the Act. Therefore, there is no illegality in initiating such proceeding for Special Audit under Section 9 (2) of the CST Act, 1956 read with Section 43A of the WBVAT Act, 2003 read with Rule 54A of the WBVAT Rules, 2005 on the ground of non-production of relevant Central Statutory declaration forms in 'C' & 'E1' for claiming inter-state sales in the furnished return at concessional rate of tax under Section 8 (1) of the CST Act, 1956 for the period 4th Qtr ending 31.03.2014.

Respondents submits that after having granted sufficient opportunity of being heard to the petitioner and considering its rebuttal filed in pursuance to the draft audit report on 21.03.2017, the respondent no. 1 issued the final report on 22.12.2017 clarifying therein the legal stand point inter alia upholding the authority's proper jurisdiction over the matter and thereby justifying the cause for initiating such Special Audit proceeding for the 4th Qtr ending 31.03.2014. In the final audit report, the petitioner's points of rebuttal to the draft audit report have been discussed at length and point-by-point. Thus, the petitioner's allegation that the authority violated the principles of natural justice is wholly untrue, invalid, baseless and has no leg to stand upon.

Respondents further submit that Section 9 (2) the CST Act, 1956, inter alia, explicitly states that '...... Subject to the other provisions of this Act and the Rules made thereunder, the authorities for the time being empowered to .... under General Sales Tax Law of the appropriate State shall, on behalf of the Government of India, ... including any interest or penalty payable by a dealer under this Act as if the tax or interest or penalty payable by such dealer under this Act is a tax or interest or penalty payable under the General Sales Tax Law of the State; and for this purpose they may exercise all or any of the powers they have under the General Sales Tax Law of the State.......... shall apply accordingly'. Thus, the petitioner's contention regarding lack of jurisdiction of the assessing authority in initiating special audit under the CST Act, 1956 is based upon erroneous interpretation of law.

Considering the facts and circumstances of the case, submission of the parties I am not inclined to interfere with the impugned Audit Report dated 22.12.2017 which has recorded elaborate reasons and discussion on the relevant provisions of law and after considering the response of the petitioner dated 29.03.2017 made against assessment dated 21.03.2017.

I am of the considered view that the impugned Audit Report dated 22.12.2017 is neither without jurisdiction nor in violation of principle of natural justice nor constitutional validity of any provision of law is involved in this Writ Petition and I find no reason in this case to invoke constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India.

In view of the discussion made above this Writ Petition being WPA No. 6768 of 2018 is dismissed.

(Md. Nizamuddin, J.)