10.08.2022.
p.b.
Sl. No.9.

W.P.A. 14121 of 2022

M/s. Eastern Polycraft Industries Ltd.
Vs.
The State of West Bengal & Ors.

Mr. Nilendu Chakraborty.
.........for the petitioner.

Mr. A. Ray,
Mr. S.Mukherjee,
Mr. D. Ghosh,
Mr. D. Sahu.
.........for the State.

Heard learned advocates appearing for the parties.

This writ petition has been filed by the petitioner being aggrieved by inaction on the part of the respondent authority concerned in furnishing the copy of the order, if any, passed by the respondent authority concerned on the appeal filed by the petitioner on 21st September, 2011 against an adjudication order passed on 29th June, 2011 by the commercial tax authority. Petitioner submits that it has made series of representations from time to time to furnish the order to him if at all passed on the said appeal and in support of his submission, petitioner has annexed series of representations. Petitioner further submits that though more than 12 years have been passed, but, till date, petitioner has not been made known to the fate of the same appeal yet the demand arising out of the adjudication order in question is on display in the official website of the department. By the order of this Court dated 18th July, 2022, learned advocate appearing for the respondents was asked to produce the record to show the fate of the appeal in question which it failed and it was contended that the record was not available. On 22nd July, 2022 an order was passed by this Court for personal appearance of the Commissioner of Commercial Tax, West Bengal, to be personally present on 8th August, 2022 at 10-30 a.m. and also to produce the relevant records in connection with the aforesaid appeal in question.

Mr. Ghosh, learned advocate appearing for the respondent commercial tax authority, submits that on 8th August, 2022, in compliance of the order of this Court, the Commissioner of Commercial Tax, West Bengal, was present in Court. Mr. Ghosh also submits that the Commissioner has issued a departmental circular on 29th July, 2022 with specific instruction that in future order of the Court should be taken seriously and record should be properly maintained and violation of the said circular will be viewed seriously. Considering such action on the part of the Commercial Tax, West Bengal, his personal appearance is dispensed with a caution to see that its circular dated 29th July, 2022 is properly implemented.

Mr. Ghosh also submits that the available records have been placed and from which it appears that till date the said appeal under Section 84 of the West Bengal Value Added Tax Act, 2003 has not been disposed of and no order has been passed till date on the said appeal.

Learned advocate appearing for the petitioner submits that in view of the revelation made by Mr. Ghosh in Court that no order has been passed on the appeal in question filed by the petitioner on 21st September, 2011 which the appellate authority concerned was bound to dispose and pass the order within a year following the year of filing the appeal, the said appeal in view of the first proviso to Section 84(2) of the West Bengal Value Added Tax Act, 2003 should be deemed to have been disposed of in accordance with law and claims of the applicant shall be deemed to have been allowed in full. For the sake of convenience, the first proviso to Section 84(2) is quoted hereunder:-

"Appeal against provisional or other assessment.- Any casual dealer or dealer may ………………………..

Provided that any appeal which is entertained under sub-section (1), shall, if not disposed of within the date as referred to in column (2) of the Table below from the date of its filing as referred to in column (1), shall be deemed to have been disposed of in accordance with law and all claims of the applicant shall be deemed to have been allowed in full.

Explanation. – For the purpose of this sub-section “year” shall have the same meaning as defined in clause (58) of section 2.

Provided further that the appropriate appellate authority may, before expiry of the period mentioned in the first proviso, obtain from the Commissioner as extension of time mentioned in that proviso and where the Commissioner, for reasons to be recorded in writing, extends the time, such appeal may be disposed of during the period of six months immediately following the period mentioned in the first proviso.”

Considering the admitted facts and circumstances of this case as appears from record, submission of the parties and relevant provisions of law, this writ petition being WPA No.14121 of 2022 is disposed of at the motion stage without calling for any affidavit and in view of the submission made by Mr. Ghosh that admittedly the aforesaid appeal which was filed in 2011 has not been disposed of and no order has been passed till date and even the Commissioner has no jurisdiction to further extend the time for disposal of the appeal in question, I hold that the appeal in question stands disposed of and the claims of the applicant/petitioner shall be deemed to have been allowed in full in view of the first proviso to

Section 84(2) of the West Bengal Value Added Tax Act, 2003.

(Md. Nizamuddin, J.)