Item No.16.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 30.08.2022

DELIVERED ON:30.08.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

FMA 447 of 2022
With
I.A. No.CAN 1 of 2021

Chandrani Pearls Private Limited.
Vs.
Deputy Commissioner of Commercial Tax, Bhawanipore Charge & ors.

Appearance:-

Mr. Boudhayan Bhattacharyya,
Ms. Sretapa Sinha ..... for the appellant.

Mr. T. M. Siddique,
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 is directed against the order dated 2nd December, 2021 in W.P.A. No.7845 of 2021. In the said writ

petition, the appellant has challenged the order passed by the fast track revisional authority, Bench No.III in Revision Case No.REV/14-15/3347/FT-5681/B-III/C dated 6th February, 2020. By the said order, revisional application was dismissed on the ground that the appellant did not appear before the revisional authority on more than two occasions. The order which was impugned before the revisional authority was an order passed by the appellate authority, viz., the Senior Joint Commissioner, Commercial Taxes, Kolkata South Circle in Appeal Case No.A-225/BH/13-14 dated 22nd august, 2014. Once again, the appeal stood dismissed on account of non-appearance of the appellant on several dates. The order, which was subject matter of challenge before the appellate authority was an assessment order under Section 9 of the Central Sales Tax Act, 1956 read with Section 46 of the West Bengal Value Added Tax Act, 2003 dated 27th June, 2013.

2. The learned Single Bench noting the conduct of the appellant, dismissed the writ petition on the ground that the appellant is a habitual defaulter and he was not inclined to interfere with the order of the revisional authority.

3. After we have elaborately heard the learned Advocates for the parties, we fully agree with the opinion rendered by the

learned Writ Court as regards the conduct of the appellant inasmuch as the appellant had not been diligently prosecuting the matter either before the first appellate authority or before the revisional authority. However, we find that as per the assessment order dated 27th June, 2013, the tax payable was Rs. 7,36,715.58 and the assessing order records that a sum of Rs.7,13,330/- has already been paid by the appellant / assessee and the balance due is Rs.23,385.58. Thus, considering the peculiar facts and circumstances of the case, we are inclined to grant one last opportunity to the appellant to go before the appellate authority and pursue its appeal. However, if the appellant does not appear on the date fixed, the appellate authority shall be entitled to dismiss the appeal for non-prosecution.

4. For the above reasons, the appeal is allowed. The order passed in the writ petition is set aside and consequently the order passed by the revisional authority dated 6th February, 2020 and the order passed by the appellate authority dated 22nd August, 2014 are set aside and the appeal in Appeal Case No.A-225/BH/13-14 stands restored to the file of the appellate authority, who shall issue notice to the appellant fixing a date for hearing. On the said date, the appellant shall appear before

the appellate authority and make submissions and after hearing the appellant, the appellate authority shall pass a speaking order on merits and in accordance with law.

5. It is made clear that no adjournment shall be granted. The appellate authority shall endeavour to dispose of the appeal within three weeks from the date on which the personal hearing is conducted without granting any unnecessary adjournment.

6. There shall be no order as to costs.

7. 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.)

NAREN/PALLAB (AR.C)