13.07.2022.
p.b.
Sl. No.12.

W.P.A. 31211 of 2017

Encon Enterprises Pvt. Ltd.
Vs.
Sales Tax Officer, Sealdah Charge & Ors.

Mr. Anil Dugar,
Mr. Rajarshi Chatterjee,
Mr. Gobindo Dey.
........for the petitioner.

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

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order of the Fast Track Revisional Authority, Commercial Taxes, W.B. Bench – III, dated 9th September, 2016 confirming the order of the appellate authority dated 28th December, 2012 modifying the adjudication order dated 26th June, 2011. Perused of the aforesaid orders of the appellate authority and the revisional authority passed in appeal and revisional application by the petitioner which where considered and disposed of on merit of the aforesaid impugned adjudication order. I have perused the grounds taken by the petitioner in the appeal filed before the appellate authority and the grounds taken in the revisional application and from nowhere it appears that the aforesaid impugned adjudication order was challenged either before the appellate authority or the revisional authority on the ground that the adjudication order being barred by limitation since the same was issued on 2nd November, 2011. It appears from record that the said adjudication order was passed on 28th June, 2011 i.e. within the period of limitation since the time to pass the order was available till 30th June, 2011. Admitted position as appears from record is that the impugned adjudication order was passed on 28th June, 2011 within the period of limitation, but, petitioner wants to challenge the same for the first time before this writ court on the ground of limitation without challenging the aforesaid adjudication order on this ground either before the appellate authority or before the revisional authority by way of taking this ground of limitation and before both the appellate authority and the revisional authority, petitioner has challenged the impugned adjudication order only on merit by waiving his right to challenge the same on the ground of limitation either before the appellate authority or before the revisional authority. For the first time before this writ court petitioner challenged the aforesaid impugned order of revisional authority by taking the point of limitation which was disposed of on merit after taking into consideration the grounds taken by the petitioner in its revisional application and wants this writ court under Article 226 of the Constitution of India to interfere with the impugned revisional order which has confirmed the order of the appellate authority which has modified the impugned adjudication order, by contending that even if it has not challenged the impugned adjudication order on the ground of limitation either before the appellate authority or before the revisional authority still it is entitled to challenge the same before this writ court for the first time and principle of waiver and constructive resjudicata should not be applied in this case. Petitioner has relied on a decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. Khetmal Parekh reported in (1994) 93 STC 406 (SC) and a decision of the Hon'ble Kerala High Court in the case of Government Wood Works Vs. State of Kerala reported in (1988) 69 STC 62 (Ker) and on perusal of the aforesaid judgments, I find that in none of these two cases facts and circumstances were similar to the present case. In the aforesaid cases, petitioner had not challenged the adjudication order before the writ court after first approaching the appellate authority and the revisional authority and without taking the point of limitation before those authorities.

Considering the facts and circumstances of this case and discussions made above, I am not inclined to interfere with the impugned revisional orders dated 9th September, 2016 and 28th December, 2012 and accordingly this writ petition being WPA No.31211 of 2017 is dismissed without order as to costs.

(Md. Nizamuddin, J.)