**Item No. 2**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**

**CIRCUIT BENCH AT JALPAIGURI**

**CONSTITUTIONAL WRIT JURISDICTION**

**APPELLATE SIDE**

HEARD ON: 12.07.2022

DELIVERED ON: 12.07.2022

**CORAM:**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**WPA 1093 of 2022**

**Tapash Kumar Saha.**

**VERSUS**

**Joint Commissioner, Commercial Taxes, Jalpaiguri Circle & Ors.**

**Appearance:-**
**Mr. Boudhayan Bhattacharyya,**
**Ms. Sretapa Sinha** .....**for the Petitioner**

**Mr. Subir Kumar Saha, Ld. A.G.P.,**
**Mr. Bikramaditya Ghosh** .. **for the State.**

***JUDGMENT***

***(Judgment of the Court was delivered by* HIRANMAY BHATTACHARYYA, *J.)***

1. The petitioner has challenged the authority of the Special Commissioner of Revenue, West Bengal to issue notice to the petitioner – dealer proposing to review and / or revise the final Audit cum Assessment order dated 7.2.2017 which was

subsequently reviewed on 7.7.2017 by exercising its suo motu powers.

2. Mr. Bhattacharya, the learned Advocate for the petitioner submits that the petitioner participated in several proceedings earlier on the selfsame dispute and the authorities on all such occasions held in favour of the petitioner. He further submits that the respondent authority in order to delay the refund of input tax credit which the petitioner is entitled to, is issuing show cause notices times and again to harass the petitioner.

3. Mr. Ghosh, learned Advocate appears for the revenue and submits that the third respondent has exercised its power of suo motu revision / review in accordance with the provision of the West Bengal Value Added Tax Act, 2005 read with relevant rules of the West Bengal Value Added Tax Rules, 2005. He further submits that it came to the notice of the concerned respondent, after scrutinizing several files that there was short levy of the value added tax. Thus, he submits that on such ground, the impugned notice dated March 22, 2022 was issued.

4. Heard the learned Advocates for the parties and perused the materials placed.

5. The petitioner has prayed for setting aside the notice dated March 22, 2022 whereby the third respondent proposed to revise and/or review the final audit report cum assessment order dated 07.02.2017 which was subsequently reviewed on 07.07.2017. The reasons for issuance of the impugned notice as indicated therein is that subsequently it was detected that there was a short levy of tax for the relevant period.

6. An opportunity was also granted to the petitioner-dealer to file an objection against such proposed order. The petitioner sought for an adjournment to file such objection which, according to the learned Advocate for the petitioner, was allowed by the respondent authority.

7. After hearing the learned Advocates for the parties, this Court is of the view that various factual as well as legal issues are to be decided. Notice dated March 22, 2022 was issued on the ground of short levy of tax. Accordingly, this Court is of the considered view that the interest of justice will be subserved if liberty is granted to the petitioner to approach the authority concerned by filing an objection to the said notice raising therein all points both factual as well as legal including the issue of jurisdiction of the third respondent to issue such notice.

8. As prayed for by the learned Advocate for the petitioner, two weeks time is granted to the petitioner to file objection to the proposed order contained in the notice dated March 22, 2022 raising all points legal, factual and jurisdictional issue. If such objection is filed within the aforesaid time limit, the Special Commissioner of Revenue, West Bengal being the third respondent is directed to conclude the said proceeding initiated by issuance of the notice dated March 22, 2022 after giving an opportunity of hearing to the petitioner or his authorized representative and by passing a reasoned order which shall be communicated to the petitioner.

9. The entire exercise shall be completed by the third respondent within a period of three weeks from the date of filing such objection.

10. In case no objection is filed by the petitioner within the time limit stipulated hereinabove, the respondent no.3 shall conclude the proceeding within three weeks from the expiry of the period of two weeks granted to the petitioner to file such objection.

11. WPA 1093 of 2022 stands disposed of with the above directions.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(HIRANMAY BHATTACHARYYA, J.)**

Naren, AR(Ct.)