OD – 18

ORDER SHEET
WPO/782/2015
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SANJAY SUR & ANR.
VS
SALES TAX OFFICER, BARASAT CHARGE AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 10th April, 2023.

Appearance:
Mr. Arijit Chakrabarti, Adv.
Mr. Saumyen Datta, Adv.
...For the Petitioner

Mr. A. Ray, Ld. GP
Mr. S. Mukherjee, Adv.
Mr. D. Ghosh, Adv.
Mr. N. Chatterjee, Adv.
...For the State

The Court : A very short pure question of law involved in this writ petition is that as to whether a Commissioner/Joint Commissioner under the West Bengal Value Added Tax, 2003, can invoke the provision of suo motu revision under Section 85 of the said Act twice. It appears from record that in the instant case an order of revision under Section 86 of the aforesaid Act was passed by the Joint Commissioner by order dated 26th March, 2014. Thereafter the Joint Commissioner invoked the provision of suo motu revision under Section 85 of the aforesaid Act and held in favour of the petitioner by his order dated 23rd July, 2014. Thereafter the senior Joint Commissioner once again invoked the provision of suo motu revision under Section 85 against his own order of suo motu revision. It is well-settled principles of law that the action of any government body or authority must be supported by law and the power to be exercised by him must be conferred upon him by any law and any action or order of a government authority is not sustainable in law if it is not supported by the law or if it has not been conferred upon him by any law.

Mr. Ghosh in opposing the writ petition argues that if suppression of fact in any case is found in that event commissioner can invoke suo motu revision against his own order of suo motu revision under Section 85 of the aforesaid Act. But he could not show or place before this Court any provision of any statute which empowers or confers upon a commissioner power to invoke suo motu provision of revision twice against his own order of suo motu revision. I find that under the West Bengal Value Added Tax, 2003, commissioner is conferred with the power of revision under Section 86 of the said Act on the application of an assessee and Section 85 of the aforesaid Act confers upon the commissioner power to exercise suo motu revision jurisdiction against a revised provisional assessment under Section 45 or any other assessment under Section 46 or Section 48 or which deemed to have been made under sub-section (1) of Section 47 or order passed by a person under sub-section (1) of Section 6 of the aforesaid Act to assist the commissioner but nowhere I find in the provision under Section 85 of the aforesaid Act that it gives power to a commissioner/Joint

Commissioner to exercise his suo motu revision jurisdiction twice against his own order by acting as an Appellate Authority. Moreso in this case I find the admitted position that by his earlier order under Section 85 of the aforesaid Act commissioner/Joint Commissioner has already held in favour of the assessee petitioner.

Considering the submission of the parties and taking into consideration the relevant provisions of Sections 85 of the West Bengal Value Added Tax, 2003, I am inclined to hold that Section 85 of the West Bengal Value Added Tax, 2003, does not empower or confer upon the commissioner any power to invoke his jurisdiction under Section 85 of the aforesaid Act and pass suo motu revision order twice against his own earlier order by acting as an appellate over the same.

In view of the discussion made above, the impugned order dated 7th January, 2015 passed by the senior Joint Commissioner against his own earlier order under Section 85 of the aforesaid Act dated 23rd July, 2014 is not sustainable in law and accordingly the same is quashed and all legal consequences will follow automatically.

With these observations and directions, this writ petition being WPO 782 of 2015 stands disposed of.

(MD. NIZAMUDDIN, J.)

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