Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 09.01.2024

DELIVERED ON: 09.01.2024

CORAM:

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

AND

THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA

M.A.T. 709 of 2023

Commissioner of Commercial Taxes & Anr.

Vs.

BKB Transport Private Limited & Ors.

Appearance:-

Mr. Anirban Ray, Ld. GP
Mr. T. M. Siddique,
Mr. T. Chakraborty … for the appellants.

Mr. Avra Mazumder,
Mr. Sumit Gadodia
Mr. Suman Bhowmik
Mr. Samrat Das
Ms. Elina Dey …. for the respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, CJ.)

1. This intra-Court appeal by the Government is directed against the common order passed in a batch of writ petitions including WPA 6426 of 2021 dated 6th December, 2021. In respect of the other matters, the Government had preferred appeal before this Court in FMA 857 of 2022 and the same was

dismissed by judgment dated 23rd November, 2022. The operative portion of the judgment reads as follows:-

106. In the result, the appeal is dismissed and the issues which were raised are answered in the following terms:-

Issues:-

(1) The writ petitioner/purchasing dealer has locus standi to maintain the claim for refund of the excess tax collected directly to them and the writ petition is maintainable.

(2) To be entitled to concessional rate of tax filing of Form "C" declaration is mandatory. However, the time limit prescribed for filing such declarations is directory and not mandatory and in the case on hand the assessing officer having accepted the Form "C" declarations and considered the same, it is deemed that the assessing officer of IOCL was satisfied that there was sufficient cause which prevented the dealer from filing Form "C" declaration within the time stipulated under the Act and the rules framed thereunder.

(3) Having held that the rejection of the Form "C" declarations was erroneous, unsustainable and illegal the assessment order dated 30.06.2020 to the said extent is set aside.

(4) The writ petitioner is entitled to the concession rate of tax as they have fulfilled the conditions in Section 8 of the Central Sales Tax Act, 1956 and the Form "C" declarations having been verified and found to be in order by the concerned authority of the State of West Bengal.

(5) For the reasons set out above, it is held that the writ petitioners are entitled to claim refund of tax directly from the State of West Bengal and they are not required to make the claim through the selling dealer, IOCL.

(6) Refund cannot be denied to the writ petitioners by the State of West Bengal disregarding the fact that excess tax was paid under compelling circumstances namely non-issuance of form "C" declarations.

(7) For the reasons set out above, it is held that the writ petitioner can claim refund directly from the appellants/State of West Bengal having borne the burden of tax which have been collected from the writ petitioner and deposited by IOCL with the Exchequer of the State of West Bengal.

(8) The State of West Bengal/ appellants are unjustified in refusing to refund the excess tax as it had been allowing

concessional rate to the writ petitioners before and after the disputed period.

(9)The circular issued by the Union of India dated 01.11.2018 is binding on the appellants/State of West Bengal as they being the agent of the Central Government for levy and collection of Central Sales Tax and non-refunding of the excess tax collected is contrary to the instruction dated 01.11.2018.

107. In the light of the conclusion which we have arrived at, the order and directions issued by the learned Single Bench stands affirmed and the appellants/State of West Bengal is directed to effect the refund of the excess tax collected directly to the writ petitioner within 45 days from the date of receipt of the server copy of this order together with interest at the statutory rate as stipulated under the WBST Act, from 01.07.2020 that is the day after the date on which the assessment order in the case of IOCL was passed that is 30.06.2020 till the date on which refund is effected. If there is any discrepancy in the date, it is clarified that interest shall be payable from the next day after the date of the assessment order till the date of payment."

2. In the result, the appeal filed by the department is dismissed and the issues, which were raised are answered in the following terms:-

Issues:-

(1) The writ petitioner/purchasing dealer has locus standi to maintain the claim for refund of the excess tax collected directly to them and the writ petition is maintainable.

(2) To be entitled to concessional rate of tax filing of Form "C" declaration is mandatory. However, the time limit prescribed for filing such declarations is directory and not mandatory and in the case on hand the assessing officer having accepted the Form "C" declarations and considered the same, it is deemed that the assessing officer of IOCL was satisfied that there was sufficient cause which prevented the dealer from filing Form "C" declaration within the time stipulated under the Act and the rules framed thereunder.

(3) Having held that the rejection of the Form "C" declarations was erroneous, unsustainable and illegal the assessment order dated 30.06.2020 to the said extent is set aside.

(4) The writ petitioner is entitled to the concession rate of tax as they have fulfilled the conditions in Section 8 of the Central Sales Tax Act, 1956 and the Form "C" declarations having been verified and found to be in order by the concerned authority of the State of West Bengal.

(5) For the reasons set out above, it is held that the writ petitioners are entitled to claim refund of tax directly from the State of West Bengal and they are not required to make the claim through the selling dealer, IOCL.

(6) Refund cannot be denied to the writ petitioners by the State of West Bengal disregarding the fact that excess tax was paid under compelling circumstances namely non-issuance of form “C” declarations.

(7) For the reasons set out above, it is held that the writ petitioner can claim refund directly from the appellants/State of West Bengal having borne the burden of tax which have been collected from the writ petitioner and deposited by IOCL with the Exchequer of the State of West Bengal.

(8) The State of West Bengal/ appellants are unjustified in refusing to refund the excess tax as it had been allowing concessional rate to the writ petitioners before and after the disputed period.

(9) The circular issued by the Union of India dated 01.11.2018 is binding on the appellants/State of West Bengal as they being the agent of the Central Government for levy and collection of Central Sales Tax and non-refunding of the excess tax collected is contrary to the instruction dated 01.11.2018.

3. In the light of the conclusion which we have arrived at, the order and directions issued by the learned Single Bench stands affirmed and the appellants/State of West Bengal is directed to effect the refund of the excess tax collected directly to the writ petitioner within 45 days from the date of

receipt of the server copy of this order together with interest at the statutory rate as stipulated under the WBST Act, from 01.07.2020 that is the day after the date on which the assessment order in the case of IOCL was passed that is 30.06.2020 till the date on which refund is effected. If there is any discrepancy in the date, it is clarified that interest shall be payable from the next day after the date of the assessment order till the date of payment.

4. There shall be no order as to costs.

5. 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, CJ**)

I agree,

(**SUPRATIM BHATTACHARYA**, **J**.)

RP/KC(AR.C)