Form No. J.(2)
Item No.3

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 09.07.2024

DELIVERED ON: 09.07.2024

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.T.T. 34 of 2024

Deputy Commissioner of Sales Tax, Howrah Range & Ors.
Versus
Turtle Ltd.

Appearance:-
Mr. Anirban Ray, Ld. G.P.
Md. T. M. Siddique
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

.....For the Petitioners/State

Mr. Sandip Choraria
Mr. Rishav Manna
Mr. Somnath Roy Chowdhury

.....For the Respondent

JUDGMENT

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

1. This writ petition has been filed by the State challenging the order passed by the West Bengal Taxation Tribunal, Kolkata (hereinafter referred to as "the Tribunal") dated 18th March, 2024.
2. The facts, which will be relevant for the disposal of this writ petition are that the goods transported by the petitioners were detained on the ground that it was in violation of Section 73 of the West Bengal Value Added Tax Act. In

the first round of litigation before the learned Tribunal, the respondent sought for release of the vehicle and the goods.

3. The learned Tribunal by an order dated 1st February, 2012 directed release of the seized articles in favour of the respondent within a time frame upon the respondent depositing security to the tune of Rs.18 lakhs out of which Rs.10 lakhs is to be deposited in cash and the remaining Rs.8 lakhs by way of bank guarantee, which will be renewed from time to time. This order was complied with by the respondent and the seized articles were returned.

4. Ultimately, the respondent filed an application under the provisions of the Settlement of Disputes (SOD 2020) and in terms of the guidelines contained therein, 10% of the disputed tax is required to be paid. This was computed at Rs.4,13,280/- and the certificate has also been issued. Thereafter, the respondent approached the learned Tribunal seeking for a direction upon the petitioners/department to refund the sum of Rs.10,00,000/-, which was paid as cash deposit pursuant to the order passed by the learned Tribunal dated 1st February, 2012.

5. The learned Tribunal has recorded that the department is agreeable to refund Rs.5,86,720/- i.e. after adjusting Rs.4,13,280/- from Rs.10,00,000/-. Aggrieved by the same, the department has filed this writ petition.

6. The contention of the learned Additional Government Pleader appearing for the writ petitioners/State is that the amount of Rs.10,00,000/-, which was deposited by the respondent pursuant to the order passed by the learned Tribunal dated 1st February, 2012 has lost the character of a deposit and the question of adjustment of a sum of Rs.4,13,280/- from the said amount of Rs.10,00,000/- does not arise.

7. We are not persuaded to accept the said submission for the reason that the learned Tribunal in its order dated 1st February, 2012 while directing release of the seized articles, directed the respondent to deposit a security to the tune of Rs.18,00,000/- out of which Rs.10,00,000/- was to be deposited in cash and the remaining Rs.8,00,000/- by way of a bank guarantee.
8. The words and phrases used in the order dated 1st February, 2012 clearly show that what was directed to be made is a deposit and not a payment. This is further fortified from the use of the word 'security'. Therefore, the intention behind passing of such an order dated 1st February, 2012 was to secure the interest of the revenue till the matter is decided by the learned Tribunal.
9. The contention of the revenue before us is that though the penalty was quantified at Rs.5,00,000/-, nothing was paid by the respondent and this fact was not placed before the learned Tribunal in an appropriate manner by the department.
10. With regard to the concession recorded by the learned Tribunal, it is submitted that the department has not given anything in writing to the learned representative, who appeared before the learned Tribunal and therefore, any such concession will not bind the department. Since, there appears to be certain doubts as regards what was paid by the respondent at the first instance and what was deposited, we are of the view that the matter should be re-examined by the learned Tribunal. However, we make it clear that the amount of Rs.18,00,000/- was only by way of a security deposit and a pre-condition for release of the seized articles. Therefore, the revenue cannot take a stand that a sum of Rs.10,00,000/-, which was made as a cash deposit out of Rs.18,00,000/- is a payment.

11. With these clarifications, the order impugned is set aside and the matter is remanded back to the learned Tribunal to consider the aspect with regard to the payment of penalty, whether the same would be also covered under the SOD and other related matters.
12. With these above observations/directions, writ petition stands disposed of.
13. No costs.
14. 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)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/Krishnendu AR(Ct.)