AD-26
Ct No.09
20.05.2024
TN

WPA No. 14132 of 2024

Shakambhari Ispat and Power Limited and another
Vs.
The State of West Bengal and others

Mr. Kumarjit Banerjee,
Ms. Sanchari Chakraborty,
Ms. Meenakshi Manot,
Ms. Tunishka Khandelwal

.... for the petitioners

Mr. Anirban Roy,
Mr. T.M. Siddique,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

.... for the State

1. Affidavit-of-service filed today be kept on record.

2. Learned counsel for the petitioners contends that an assessment was made against the petitioners by the respondent-authorities under the Bengal Electricity Duty Act, 1935 in the year 2019 for a period from September 16, 2007 to June 10, 2019.

3. The matter went up to the revisional forum where by an order dated August 02, 2023 passed in Revision Case No. 15(E) of 2019-20, the revisional forum held *inter alia* that a substantial portion of the claim was time-barred. It was observed that when the appeal was filed, the appellate authority should have considered the above defects as mentioned therein and should have set aside the assessment order remanding the matter to the Assessing Authority with the direction to make fresh

assessment separately for each year or part/s thereof in respect of the eligible periods only (i.e., the periods for which the assessment cases were within the limitation period) in compliance with the relevant provisions of the said Act and Rules.

4. Accordingly, the impugned appellate order was set aside by the revisional forum with direction to the appellate authority to pass an order afresh in compliance with the relevant provisions of law and after giving the petitioner a reasonable opportunity of being heard.

5. Learned counsel for the petitioner contends that instead of resorting to the mode as directed by the revisional authority, the respondent-authorities issued fresh assessment notices which are impugned herein. It is mentioned in the said impugned notice dated October 16, 2023 annexed at page-59, that the said notice of assessment was one under Section 3A of the 1935 Act, thereby indicating that the notice was a fresh assessment. However, such assessment in October, 2023 was again made for a period from the year 2015, accordingly suffering from the self-same defect of limitation for which it was set aside on the previous occasion.

6. It is argued that such fresh assessment, being palpably time-barred, ought to be struck down on the face of it.

7. Learned counsel appearing for the respondent-authorities submits that there was a continuation of

the proceeding up to the revisional forum. Pursuant to the direction of the revisional forum, the appellate authority, by an order dated October 04, 2023 annexed at page-58 of the writ petition, had directed the authorities to make a fresh assessment; the first such assessment was to be initiated starting from the period April 01, 2015 and onwards.

8. It is argued that strictly in terms of the said order of the appellate authority, passed in consonance of the revisional authorities' direction, the impugned assessments were raised and, as such, those do not suffer from any illegality and/or infirmity.

9. The question which has arisen in the present case is, thus, whether or not the impugned assessments were independent fresh assessments made in the year 2023 from the period 2015 onwards, in which case those would be palpably time-barred. A careful perusal of the order dated August 02, 2023 passed in Revision Case No. 15(E) of 2019-20, however, shows that by the said order, the revisional authority had directed fresh assessments to be made separately for each year or part/s thereof, for the eligible periods only.

10. The said periods were indicated to be the periods for which the assessment cases were within the limitation period.

11. Although the assessment which was impugned in the said proceeding was made in the year 2019, at that juncture, the period of assessment within the limitation

was from April 01, 2015 onwards. The revisional court accordingly directed the appellate authority to pass an order afresh in compliance with the relevant provisions of the law after giving the petitioner reasonable opportunity of being heard.

12. It transpires from the order dated September 14, 2023 that vide the said order, the appellate authority had issued a hearing notice and thereafter by its order dated October 04, 2023 had directed fresh assessment to be done, to be initiated starting from the period April 01, 2015, which was fully in consonance with the revisional authorities' direction.

13. Thereafter, the impugned assessment was raised, in consonance with the order of the appellate authority which was passed in turn in terms of the revisional authorities' order, from the period April 01, 2015 onwards.

14. In the present case, thus, the impugned assessments in the month of October, 2023 were not fresh assessments but merely assessments done afresh for the relevant period of assessment which was *sub judice* before the relevant forum and thereafter before the appellate authority all along. Since the revisional authority's order was dated August 02, 2023, even as on that date, the revisional authority was in seisin of the dispute relating to the relevant period up to 2019, which was under consideration in the revision.

15. Thus, the revisional authority's direction has to taken in proper context, being the period which was under consideration before the said forum.

16. Hence, the revisional forum having directed a fresh assessment to be made for the eligible periods, the relevant point of consideration would be the year 2019, to be precise September, 2019, when the said assessments were made in the first place. Since the matter was *sub judice* all along till the revisional forum and thereafter before the appellate forum after remand, it cannot be said that the claim became time-barred during the pendency of the said proceeding.

17. Accordingly, the relevant period under consideration for making the assessment was the year 2019, in which context, the period from which limitation started would be April 01, 2015.

18. The appellate authority's order passed after remand having not been challenged before any forum has attained finality. It clearly enumerated that the assessment period would be from April 01, 2015, in terms of which the impugned assessments were raised.

19. Hence, by no stretch of imagination can the impugned assessments be labelled as fresh assessments independent of the orders passed by the revisional and appellate forums.

20. Thus, I do not find any infirmity in the assessments impugned herein.

21. Accordingly, WPA No. 14132 of 2024 is dismissed on contest without any order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)