Form No. J.(2)
Item No. 13

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 25.06.2024

DELIVERED ON: 25.06.2024

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

W.P.T.T. 35 of 2024
Exide Industries Limited
Vs.
Senior Joint Commissioner,
Sales Tax, Central Audit Unit-I & Ors.

Appearance:-
Mr. Souradeep Majumdar ....for the petitioner

Mr. Anirban Ray, Ld. GP
Md. T.M. Siddique
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ....for the State

JUDGMENT

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

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal (hereinafter referred to as the 'learned tribunal') dated 28th March, 2024. By the said order, the application filed by the petitioner for condonation of delay of 466 days in filing the main application being RN-34 of 2024 was dismissed.

2. We have elaborately heard the learned advocate for the writ petitioner and the learned advocate appearing for the State/respondents and have carefully gone through the order passed by the learned tribunal.
3. On perusal of the impugned order, we find that the reasoning given by the learned tribunal would be acceptable; it is just and proper considering the facts and circumstances of the case and more particularly, the insufficient pleadings to support the stand of the petitioner that it could prefer the application before the learned tribunal within the period of limitation.
4. One additional fact, which we take note of is, that the writ petitioner is a Limited Company and it is not a small entity or a small time assessee. Therefore, the explanation, which was sought to be placed before the learned tribunal was vague and not acceptable and therefore, rightly rejected by the learned tribunal. Therefore, we would have been well justified to dismiss the writ petition and affirm the order passed by the learned tribunal. However, certain facts and circumstances persuade us to do otherwise.
5. The writ petitioner/assessee diligently contested the proceedings before the assessing officer, who had completed the assessment by order dated 25th July, 2017. Thereafter the writ petitioner filed a statutory appeal under section 84 of the Act after remitting the mandatory pre-deposit. The appeal was contested by the writ petitioner and the appellate authority dismissed the appeal by a reasoned order. The writ petitioner preferred the revision petition before the West Bengal Commercial Taxes Appellate & Revisional Board. The said revision petition was well within limitation and the writ petitioner diligently contested the said revision petition, which was disposed of by a reasoned order. It is thereafter, due to certain circumstances, which have

been pleaded by the writ petitioner, the application was not filed before the learned tribunal and it was delayed by 466 days, which the learned tribunal has refused to condone.

6. Thus, considering the fact that the assessment is a high-pitched assessment and the writ petitioner had been diligently contesting the proceedings from the year 2017 onwards commencing with the assessing officer and culminating with the revisional board, we are of the view that an opportunity can be granted to the writ petitioner to contest the application before the learned tribunal on merits since the learned tribunal is the last fact finding authority in the hierarchy of authorities under the Act.

7. However, this relief can be granted to the writ petitioner subject to certain conditions. Accordingly, the writ petition is disposed of giving liberty to the petitioner to contest the application before the learned tribunal on merits subject to the condition that the writ petitioner pays a sum of Rs. 1 crore within a period of eight weeks from the date of receipt of server copy of this judgment and order.

8. If the writ petitioner complies with this condition and produces the payment receipt before the learned tribunal, the tribunal shall exercise discretion and condone the delay in filing the main application on merits and in accordance with law.

9. In the event, the writ petitioner does not avail aforementioned liberty within the time stipulated, the main application will stand automatically dismissed without further reference to this Court.

10. Needless to state, if the writ petitioner complies with the above direction and pays the sum of Rs. 1 crore, the same shall abide by the final orders that shall be passed by the learned tribunal.

11. No costs.

12. 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/KS AR(Ct.)