Form No. J.(2)
Item No. 01

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

HEARD ON: 03.12.2024

DELIVERED ON: 03.12.2024

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

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.T.T. 40 of 2024
Pradeep Kumar Jain
Vs.
Sales Tax Officer,
Esplande Charge & Ors.

Appearance:-
Mr. Sandip Choraria
Mr. Rishav Manna ....**for the petitioner**

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique, Sr. Adv.
Mr. Tanoy Chakraborty
Mr. S. Sanyal ....**for the respondents**

JUDGMENT

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

1. This writ petition has been filed challenging an order passed by the West Bengal Taxation Tribunal dated July 2, 2024, whereby the learned tribunal remanded the matter to the West Bengal Commercial Taxes Appellate and Revisional Board for re-visiting the revisional order.

2. The learned advocate appearing for the petitioner does not have any grievance with regard to the order of remand to the Revisional Board but is aggrieved by the observation made by the learned tribunal restricting the

remand only to the point with regard to the estimation of turnover, which, even according to the tribunal, was not mentioned in the best of judgment assessment order.

3. It is the settled legal principle that onus is on the assessee to prove movement of goods and the assessing authority cannot be called upon to prove the negative.

4. On perusal of the assessment order, we find that the assessing authority has found that some of the vehicles, on verification from the database of the Motor Vehicles Department were found to be non-existing and some has no capacity to bear the tons of silicon sheet alleged to have been transported. Therefore, it is for the assessee to establish by records as well as vehicle numbers and other documents that the silicon sheets were being transported in those goods. Apart from that, the learned tribunal also noted that the writ petitioner has not produced the relevant tax invoices.

5. It is submitted by the learned advocate for the petitioner that this finding is incorrect since at the time of assessment, the invoices have been submitted.

6. As observed earlier, the entire onus is on the assessee to prove movement of goods and if he fails to prove the movement of goods, then the input tax credit claim has to be denied. However, since the learned tribunal was of the view that the matter should be re-visited by the Revisional Board, instead of restricting the order of remand only with regard to the estimation and the turnover, we slightly modify the order passed by the learned tribunal by converting the order into an open remand, whereby the West Bengal Commercial Taxes Appellate and Revisional Board shall re-visit the

entire revisional order and afford an opportunity of personal hearing to the assessee to produce all documents and thereafter pass a fresh order uninfluenced by the order passed by the Appellate and Revisional Board, which was challenged before the learned tribunal.

7. The Appellate and Revisional Board shall issue notice to the writ petitioner/assessee directing him to appear on a particular date and on which date, the assessee or his authorised representative shall appear in person, produce all documents and shall not seek for any adjournment. Thereafter, the Appellate and Revisional Board shall pass fresh orders on merits and in accordance with law.

8. It is made clear that this Court has not made any observation on the merits of the matter and it is upto the Appellate and Revisional Board to take a decision on the documents, which can be placed.

9. With the aforesaid observations/directions, the writ petition is disposed of.

10. No costs.

11. 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.)