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

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

WP.TT No.41 of 2024

A.N.E. Industries Pvt. Ltd.
Vs.
Sales Tax Officer, Durgapur Charge & Ors.

Appearance:-
Mr. Sandip Choraria
Mr. Rishav Manna ....**For the Appellant**

Mr. Anirban Ray, Ld. G.P.
Md. T. M. Siddique
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. S. 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 dated 18th August, 2023. By the said order, the Tribunal dismissed the appeal filed against the order passed by the appellate authority dismissing the appeal for non-compliance of the pre-deposit condition.

2. The order passed by the learned Tribunal cannot be faulted as pre-deposit is mandatory and the writ petitioner having not complied with the same,

the appellate authority was well-justified in dismissing the appeal as the appeal is no appeal in the eye of law.

3. However, we find that though the assessment order was passed by the Sales Tax Officer, Durgapur Charge as early as on 29th June, 2017, the said order is still continued to remain a paper order and the department has not been able to recover any taxes.

4. The learned advocate appearing for the writ petitioner submits that one opportunity may be given to the petitioner/assessee to go before the appellate authority and the assessee is ready and willing to comply with the pre-deposit condition. Under normal circumstances, the request might have been accepted and the matter would have been remanded back to the appellate authority. However, taking note of the conduct of the assessee in raising certain issues, which in the opinion of the learned Tribunal were frivolous leading to the dismissal of the appeal with costs before the Tribunal, we are of the view that discretion can be exercised in the assessee's case subject to certain stringent conditions.

5. As could be seen from the assessment order dated 29th June, 2017, the total tax assessed is Rs.33,153,513.00 and the interest Rs.18,897,502.00 and the total demand is Rs.52,051,015.00. In order to afford one more opportunity to the writ petitioner, we direct the writ petitioner to pay 25% of the total tax dues i.e. 25% of Rs.33,153,513.00 within a period of six weeks from the date of receipt of server copy of this order.

6. If the writ petitioner complies with the said condition within the time prescribed and produces proof of such remittance before the appellate authority, the appellate authority shall restore the appeal to its file, hear

the matter on merits and pass a reasoned order. In the event, the petitioner does not comply with the above condition within the time stipulated, the benefit of this order will not enure to the writ petitioner and the writ petition would stand automatically dismissed without reference to this Court.

7. No costs.

8. 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.)