Form No. J.(2)
Item No.04
PG/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUIONAL WRIT JURISDICTION
APPELLATE SIDE
HEARD ON: 17.12.2024

DELIVERED ON: 17.12.2024

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

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WP.TT 45 of 2024

Shri Ambika Metaliks Pvt. Limited
Vs.
The Deputy Commissioner, Commercial Taxes, Bally Charge, Howrah & Ors.

Appearance:-
Mr. Anil Kumar Duggar
Mr. Rajarshi Chatterjee
Mrs. Suman Sahani ....**For the Petitioner**

Mr. Anirban Roy, Ld. G.P.
Md. T. M. Siddiqui
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 an order passed by the West Bengal Taxation Tribunal dated 12th August, 2024, by which an application filed by the writ petitioner for condonation of delay of 655 days in filing appeal before the Tribunal was dismissed.

2. The appeal was preferred before the Tribunal challenging the order passed by the appellate authority viz. the Senior Joint Commissioner, Commercial Taxes, Bally Circle dated 6th July, 2018. By the said order, the assessment order dated 27th February, 2018 was affirmed on a technical ground that

the writ petitioner has not paid 15% of the disputed tax at the time of filing the appeal.

3. So far as the application for condonation of delay is concerned, the petitioner has assigned certain reasons, which, according to the petitioner, was beyond its control and it has prayed for condonation of delay. In any event, the delay is inordinate as it is 655 days.

4. Be that as it may, the appeal filed before the appellate authority was dismissed by order dated 6th July, 2018 on a technical ground that the petitioner has not deposited 15% of the disputed tax, as required under Section 84(1) of the West Bengal Value Added Tax Act, 2003 read with Rule 138(2)(b)(ia) of the West Bengal Value Added Tax Rules, 2005.

5. Mr. Dugar, learned advocate appearing for the petitioner would submit that the petitioner is not required to make the pre-deposit of 15% of the disputed tax, since the notice along with the draft assessment order was not signed. We are not persuaded to accept the said submission because of the said contention is a contention that is to be agitated on the merits of the matter and this cannot be a ground to refuse to comply with the statutory mandate under Section 84(1) of the Act, which provision has also been upheld by this Court.

6. Considering the fact that the assessment is high-pitched assessment and the assessment was *ex parte* since the petitioner did not appear and also taking note of the fact that though the final assessment order was passed on 27th February, 2018, till date, the same has remained a paper order and the Government has not been able to recover any tax, we are of the view that one more opportunity can be granted to the writ petitioner to pursue

their appeal before the Senior Joint Commissioner, Commercial Taxes, Bally Circle provided the petitioner complies with the pre-deposit condition by paying 15% of the disputed tax.

7. For the above reasons, the writ petition is allowed and the orders impugned are set aside including the order passed by the Senior Joint Commissioner, Bally Charge dated 6th July, 2018 subject to the condition that the petitioner pays 15% of the disputed tax, as required under Section 84 (1) of the Act within 30 days from the date of receipt of the server copy of this judgment and order.

8. Upon remitting the amount, if the petitioner files the challan evidencing payment, the appellate authority shall restore the appeal to its file and hear the appeal on merits after affording an opportunity of personal hearing to the writ petitioner.

9. In the event, the writ petitioner fails to comply with the above direction within the time stipulated, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed without reference to this Court.

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.)