Form No. J.(2)
Item No.1

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

HEARD ON: 18.02.2025

DELIVERED ON: 18.02.2025

CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

W.P.T.T. 2 of 2025

Linde India Ltd.
Vs.
Senior Joint Commissioner of Sales Tax, Central Audit Unit & Ors.

Appearance:-
Mr. Souradeep Majumdar
......For the Petitioner

Mr. Anirban Ray, Ld. G.P.
Md. T. M. Siddiqui, Sr. Adv.
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
.........For the State

<u>JUDGMENT</u>

(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 in C.A.N. 251 of 2024 in Case No. RN–236 of 2024 dated December 3, 2024.

2. This application was filed by the writ petitioner before the learned Tribunal for condonation of delay of about 314 days in filing the main application in which the writ petitioner had challenged the order passed by the West Bengal Commercial Taxes Appellate and Revisional Board dated 2nd November, 2023.

3. The learned Tribunal was not convinced with the explanation offered and found that even if a liberal approach is taken, the conduct of the writ petitioner does not permit the Tribunal to exercise any discretion in the matter as the writ petitioner was not diligent in prosecuting its remedies.

4. On going through the averments made in the application filed for condonation of delay, we find that the reasons given by the writ petitioner for condonation of delay of 314 days is far from being satisfactory. Nonetheless, we find that the remedy before the learned Tribunal is the last of the hierarchy of remedies, where the assessee will be entitled to agitate the factual matrix of the matter apart from making submissions on legal grounds.

5. Therefore, we are of the view that if the writ petitioner is put on terms and if the writ petitioner complies with the same, the application filed before the learned Tribunal could be considered on merits.

6. In the light of the above, we direct the petitioner to pay a sum of Rs.5,00,000/- as against the tax demanded from the writ petitioner within a period of eight weeks from the date of receipt of server copy of this order. If the writ petitioner complies with the said condition and produces the acknowledgement for payment of Rs.5,00,000/- towards the outstanding tax dues, then the delay in filing the application before the learned Tribunal in Case No. RN- 236 of 2024 be condoned and the application be heard and decided by the learned Tribunal on merits and in accordance with law.

7. In the event, the writ petitioner fails to comply with the above condition within the time frame stipulated, the benefit of this order will not enure to

the writ petitioner and this writ petition would be dismissed automatically without reference to this Court.

8. In the event, the writ petitioner complies with the condition and ultimately succeeds before learned Tribunal, then the amount of Rs.5,00,000/-, which has been paid by the writ petitioner, shall be adjusted against the future tax dues that may be payable by the writ petitioner.

9. Accordingly, writ petition stands 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.

(CHAITALI CHATTERJEE (DAS) J.)

Pallab/KS AR(Ct.)