25.02.2025
Item No.2
gd/ssd

WP.TT/3/2025
M/S. N.P. TRADING COMPANY
VS
DEPUTY SECRETARY, GOVERNMENT OF WEST BENGAL AND ORS.

Ms. Debanjana De,
Mr. Debasish De
..for the Appellant.

Mr. Anirban Ray,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

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1. This writ petition has been filed challenging an order passed by the West Bengal Taxation Tribunal (hereinafter referred to as “the learned Tribunal”) dated 15.7.2024 whereby the application filed by the writ petitioner in RN-183 of 2023 was rejected on the ground that the tribunal cannot issue the direction sought for.

2. We have heard the learned advocates for either of the parties.

3. It is true that the learned tribunal could not have granted the direction sought for by the applicant as it would be fall outside the jurisdiction of the tribunal as the tribunal would be entitled to consider the correctness of the order passed by the Revisional Board or the Revisional Authority in a revision petition

filed by the assessee challenging the order of assessment.

4. However, the facts of the present case much of which is not in dispute has convinced us to exercise jurisdiction under Article 226 of the Constitution so that a genuine taxpayer like the writ petitioner should not be taxed at higher rate of tax for no fault of the writ petitioner.

5. The admitted facts are that the writ petitioner is the selling dealer having entered into a transaction with the 7th respondent for sale of Tendu Leaves. The sale is admittedly an inter-State sale as the commodity was sold from Chhattisgarh State. This aspect of the matter has not been disputed by the department at any point of time.

6. Apart from the transaction which the writ petitioner had with the 7th respondent, the writ petitioner had other inter-State sale transactions with other entities and in respect of those transactions the writ petitioner was able to obtain Form-C declaration from the purchasing dealer and, therefore, the transactions were charged at the concessional rate of duty at 2% instead of 5%.

7. However, in respect of the transaction done with the 7th respondent, the writ petitioner was unable to obtain Form-C declaration, as a result of which, the writ petitioner's assessing officer did not extend the

benefit of concessional rate of tax at 2% and was compelled to tax the writ petitioner at the rate of 5%. The challenge to such assessment was unsuccessful twice before the Revisional Authority.

8. Consequently, the writ petitioner thought fit to file an application before the tribunal and what prompted the writ petitioner to do so was an internal communication which was sent by the 6th respondent, namely, the Assistant Commissioner of Revenue, Commercial Taxes, Berhampore Charge to the 1st respondent, namely, the Deputy Secretary to Government of West Bengal dated 16.11.2022. In the said communication it is admitted that the transaction done by the writ petitioner with the 7th respondent was an inter-State sale.

9. However, since the 7th respondent has not applied for issuance of Form-C declaration before his jurisdictional assessing officer, namely, the 6th respondent, Form-C declaration could not be issued in favour of the writ petitioner. This has been explicitly stated. That apart it has been pointed out by the 6th respondent that the 7th respondent has not submitted any return for the quarter ending 30th June, 2017 and was assessed provisionally under Section 45 of the West Bengal Value Added Tax Act, 2003.

10. Thus, it is required to be seen as to what remedy the petitioner is entitled to. Form-C declaration

have been held to be documents when produce by the dealer, they will be entitled to benefit of the concessional rate of tax or reduced rate of tax. There are several decisions which have been pointed out and even if there is a defect in Form-C declaration issued in respect of an inter-State sale the same can be rectified and if there is a delay in issuance of Form-C declaration by the assessing officer of the purchasing dealer and if the Form-C declaration is issued belatedly, such declaration can be produced before the jurisdictional assessing officer of the selling dealer and the assessment for the relevant period can be revised.

11. Apart from that, it has also been held that if the selling dealer is unable to get the defects rectified in the Form-C declaration issued at the behest of the purchasing dealer, it will be well open to the selling dealer to produce contemporaneous records to establish the genuinity of the inter-State sale so that they get the benefit of the reduced rate of tax or the concessional rate of tax.

12. In the instant case, the factual position is much better as the respondent/department does not dispute the fact that the transaction done by the writ petitioner with the 7th respondent is a case of inter-State sale. There may be cases where the purchasing dealer might have faced action by the department including that of cancellation of registration and there

are decisions which have held that if the registration of the selling dealer is valid during the period when the inter-State sale took place, then the selling dealer would be entitled to the concessional rate of tax.

13. More or less an identical issue was decided by the Division Bench of this court in the case of Commissioner of Commercial Taxes and Another v. Tata Steel Limited and Others in FMA 857 of 2022 dated 23.11.2022.

14. We are informed the said decision though the appeal was filed against the said order before the Hon'ble Supreme Court, subsequently, the State Government accepted the decision and the concessional rate of tax was extended to the assessee therein, namely, Tata Steel Limited. Though this writ petition arises out of a challenge to an order passed by the learned tribunal yet this court is not denude of jurisdiction to do substantial justice in the instant matter in exercise of its powers under Article 226 of the Constitution of India, particularly when facts are not in dispute, that the transaction between the writ petitioner and the 7th respondent is a case of inter-State sale.

15. For the above reasons, the writ petition is disposed of by directing the 6th respondent to address a letter to the writ petitioner to the effect that the subject sale transaction is admittedly an inter-State sale, and

Form-C declaration is not being able to be issued as the 7th respondent has not filed any application for issuance of Form-C declaration.

16. The petitioner's assessing officer is at Chhattisgarh who shall take note of the communication as directed above and proceed to act on the same to enable the petitioner to get the benefit of concessional rate of tax.

17. Considering the peculiarity of the facts and circumstances of the case and more particularly that the 6th respondent has admitted the transaction to be the inter-State sale, it is held that the petitioner will be entitled to concessional rate of tax at the rate of 2% on the subject transaction based on the admitted documents, more particularly the stand taken by the 6th respondent that the sale transaction is an inter-State sale. Since the jurisdictional assessing officer of the petitioner is outside the territorial jurisdiction of this court, a positive direction cannot be issued to the said officer.

18. However, taking note of the observations contained in this judgment and order, the jurisdictional assessing officer of the petitioner shall extend concessional rate of tax to the petitioner on the subject transaction at the rate of 2%.

19. The above direction be complied with by the 6^{th} respondent within a period of eight weeks from the date of receipt of the server copy of this order.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)