Form No. J.(2)
Item Nos. 1
Pallab/KS AR(Ct.)

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

HEARD ON: 04.03.2025

DELIVERED ON: 04.03.2025

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

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

W.P.T.T. 5 of 2025
ALD Automotive Private Limited
Vs.
Sales Tax Officer, Central Section
Directorate of Commercial Taxes & Ors.

Appearance:-
Mr. Anil Kr. Duggar
Mr. Rajarshi Chatterjee ....for the petitioner

Mr. Anirban Ray, Ld. GP
Md. T.M. Siddique, Ld. Sr. Adv.
Mr. Tanoy Chakraborty
Mr. S. Sanyal
Mr. S. Shaw ....for the State

(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 (for brevity 'the tribunal') in RN-393 of 2021 dated June 26, 2024. The writ petitioner filed the application before the tribunal challenging the order passed by the Fast Track Revisional Authority dated February 28, 2020, which confirmed the order passed by the appellate authority, who had confirmed the best of judgment

assessment made on the writ petitioner by the assessing authority by order dated June 29, 2012.

2. The learned tribunal by the impugned order has dismissed the application filed by the writ petitioner primarily on the ground that the order passed by the Fast Track Revisional Authority, impugned before it, is a well reasoned order and does not appear to have infringed any provision of law and any said principle of law. Furthermore, the learned tribunal held that the fact finding authority viz., the Revisional Authority has discussed the facts and the tribunal does not find any obvious contradiction between the statement by the authorities at two places. Aggrieved by such order, the writ petitioner has filed the present writ petition.

3. We have elaborately heard Mr. Duggar, learned advocate for the petitioner and Mr. T.M. Siddique, learned senior advocate assisted by Mr. Tanoy Chakraborty, learned advocate appearing on behalf of the State.

4. As noted above, the assessment made by the assessing officer was an *ex parte* order, as it appears that the writ petitioner did not respond to the notices issued by the assessing authority. An appeal was preferred to the first appellate authority, which was rejected. Aggrieved by such order of rejection by the first appellate authority, the writ petitioner filed a revisional application before the West Bengal Commercial Taxes, Appellate and Revisional Board, which was later transferred by virtue of the power conferred on the Commissioner of Commercial Taxes, West Bengal under section 87A of the West Bengal Value Added Tax Act, 2003 (for brevity 'the Act') to be decided by the Fast Track Revisional Authority. The said authority by order dated February 28, 2020 partly allowed the revision

petition by modifying the order passed by the Senior Joint Commissioner of Commercial Taxes, Kolkata to the extent indicated in the said order.

5. Before the Fast Track Revisional Authority, a report was filed by the revenue dated September 17, 2019 stating that ASP may be considered for Rs. 25376866.00/- as mentioned in form 88. Further, the report states that for want of original tax invoice and other relevant documents, claim of ITC for Rs. 2680672.00/- could not be verified. The report also added that ITC B/F may be considered for Rs. 334710.00/- on the ground that the same was allowed in the reassessment order in the previous year and the applicant failed to submit any appeal petition in this regard.

6. The petitioner/assessee sought leave before the Fast Track Revisional Authority to file a rebuttal to the report dated September 17, 2019, which prayer was granted and a rebuttal was filed along with the documents. This has been accepted by the Fast Track Revisional Authority in its order dated February 28, 2020. In the rebuttal, the assessee, among other issues, while dealing with the matter concerning disallowance of ITC, has specifically stated that the original tax invoice, payment register and party ledger have been produced along with the reply to the verification report dated September 17, 2019. However, in the order passed by the Fast Track Revisional Authority, the Authority records the submission made by the learned advocate for the writ petitioner that copy of tax invoice, payment register and party ledger have been produced and lease rentals accruing has been included in the turnover of sale and tax has been paid on it. Further, the submission of the learned advocate to the effect that the vendor has mentioned the TIN of lessee in the return, which has resulted in mismatch of purchase has also been recorded.

7. However, in the subsequent paragraph, the Revisional Authority has stated that the petitioner has failed to produce original tax invoice. Whether this was a correct recording of the factual position or not, was required to be adjudicated as the petitioner has raised a specific ground before the learned tribunal in this regard.

8. On going through the memorandum of grounds filed before the learned tribunal, we find that the petitioner has raised as many as 14 grounds for consideration and one such ground being that the assessment order is ante-dated and barred by limitation and therefore, liable to be quashed.

9. The petitioner has also contended that the notices were not served and there has been violation of the principles of natural justice. Thus, what was required to be ascertained was whether the documents i.e. the original tax invoice, payment register, party ledgers were in fact, produced by the petitioner along with the reply to the verification report dated September 17, 2019. Apart from that, the question of limitation having been raised, the same also, is required to be adjudicated.

10. The learned tribunal has recorded that the learned advocate for the petitioner has made only one submission stating that the Fast Track Revisional Authority has committed a factual mistake and it appears that other submissions were not made. This is being controverted by the petitioner.

11. Be that as it may, before the revisional authority, the writ petitioner/assessee has been granted partial relief and therefore, it cannot be stated to be a case, where the petitioner is wholly unjustified with regard to its claim.

12. Since the matter involves verification of the documents, which the petitioner asserts to have produced along with its reply to the verification report, we are of the view that one more opportunity can be granted to the writ petitioner to go before the 4th respondent, which authority presently has jurisdiction viz., West Bengal Commercial Taxes Appellate and Revisional Board so that a factual verification can be done.

13. The learned advocate for the petitioner submitted that the original tax invoice, payment register, party ledgers etc. are very much available with the writ petitioner/assessee and has expressed his willingness even to produce the same before this Court.

14. In any event, as the matter requires verification of the documents, which are stated to be in possession of the writ petitioner, therefore, we will be justified in remanding the matter back to the 4th respondent for a fresh consideration of all issues, which were raised by the writ petitioner in the grounds of revision initially filed before the Revisional Board, which stood transferred to the Fast Track Revisional Authority as well as the issues, which were canvassed in the rebuttal/reply to the verification report dated September 17, 2019.

15. For the above reasons, the writ petition is allowed. The order passed by the learned tribunal is set aside and consequently, the order passed by the Fast Track Revisional Authority is also set aside and the matter stands remanded to the 4th respondent viz., West Bengal Commercial Taxes Appellate and Revisional Board for a fresh decision on merits after affording an opportunity of personal hearing to the authorised representative of the petitioner and upon consideration of the submissions made as well as the documents that may be placed before the Revisional Board.

16. No costs.

17. 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.)