08.04.2025
DL.2
Court No.1
S. Gayen/
SM

<u>WP.TT 7 of 2025</u>

M/s. Malda Metal Pvt. Ltd.
Versus
The Joint Commissioner of Sales Tax,
Baharampore Charge & Ors.

Mr. Abhratosh Mazumder, Sr. Adv.
Mr. Sandip Choraria
Ms. Sukalpa Seal
...for the Petitioner

Mr. Anirban Ray, Sr. Adv.
Mr. T.M. Siddiqui, Sr. Adv.
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal, Bidhannagar, Kolkata dated 26th September, 2024 by which an application filed by the petitioner for recalling and modifying the order dated 18th March, 2024 passed in RA No. 308 of 2022 was dismissed. By the said order dated 18th March, 2024 the learned Tribunal recorded the submission made on behalf of the petitioner that the petitioner will comply with the pre-deposit condition and their appeal against the *ex parte* assessment order may be decided on merits.
2. The writ petitioner's case in the recalling application was that the learned advocate who appeared for the writ petitioner was not given specific instruction to

make any concession before the learned Tribunal. This was considered by the learned Tribunal elaborately and the stand taken by the petitioner was rejected.

3. We are fully in agreement with the view taken by the learned Tribunal and we would have been well justifying in dismissing the writ petition. However, bearing in mind two aspects, one is the interest of revenue since the assessment order was for the period 2012-13 which was an *ex parte* assessment order passed on 25th June, 2015 continues to remain as a paper order and no recovery could be made by the department. The second aspect is that the financial condition of the petitioner is very bad in as much as action has been initiated under SARFAESI Act and the bank accounts have been attached.

4. Therefore, we are of the view that without going into the fact whether the contentions raised by the petitioner that the draft assessment order was served or not served, it would be in the interest of revenue to send back the matter to the Assessing Officer, so that the assessment can be retained after opportunity to the writ petitioner. This direction will be appropriate in the case on hand since the facts are very peculiar and unique.

5. For the above reasons, we allow this writ petition and set aside the order passed by the learned Tribunal, the revisional authority, the appellate authority as well as

the *ex parte* assessment order dated 25th June, 2015 passed by the Joint Commissioner and the matter is remanded back to the Assessing Officer for a fresh decision on merits. The assessing officer shall issue notice to the writ petitioner fixing a date on which the petitioner should appear along with their books of accounts and all other relevant documents and no adjournment shall be granted. Thereafter, after scrutinizing books of the accounts and relevant documents and also after hearing the petitioner, the assessing officer shall pass a fresh assessment order on merits in accordance with law uninfluenced by any of the observations made in the earlier *ex parte* assessment order or the order passed by the appellate authority or revisional board or by the learned Tribunal. It is made clear that this order has been passed considering the peculiar facts and circumstances of the case and not to be treated as precedent.

6. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)