06.05.2025
Item No.49
Ct. No.1
RP/SM

WP.TT No.8 of 2025

JHARNA SAHA
VS.
JOINT COMMISSIONER OF SALES TAX, BEHALA CHARGE & ORS.

Mr. Jaweid Ahmed Khan, Adv.
Mr. Talha Ahmed Khan, Adv.
Mr. Bhaskar Sengupta, Adv.
…for the Appellant.

Mr. Anirban Ray, G.P.
Mr. Md. T.M. Siddiqui, A.G.P.
Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.
…for the Respondents.

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal in an application filed by the writ petitioner being RN-81/2024 dated 7th March, 2025. At the first blush the court was bit curious to find as to why the petitioner has challenged the order passed by the learned tribunal as the learned tribunal has accepted the case of the petitioner and held that no notice was served on the petitioner before the assessment proceeding was completed but in the last paragraph of the impugned order the learned tribunal has directed the Assessing Officer to initiate a fresh proceeding after sending fresh notice and complete the assessment within a period of six months. Aggrieved by this portion of the order the petitioner has filed the writ petition.
2. We have heard the learned advocates appearing for the parties.
3. The order and direction issued by the learned tribunal is not legally tenable in the light of the relevant statutory

provision under the West Bengal Value Added Tax Act. Section 46(1) of the said Act read with Rule 56(1)(2) states that the authority shall proceed to assess only after service of mandatory notice in Form-25 allowing a prescribed minimum time to the assessee to comply with prescribed requirements. Without service no jurisdiction to assess may be lawfully assumed. This condition has not been satisfied in the instant case on hand, the assessment becomes *non est* in the eye of law. However, this aspect has been lost sight of the learned tribunal and the learned tribunal has in effect granted a second lease of life to the department to initiate fresh assessment proceeding beyond the period of limitation. Therefore, to that extent the order of the learned tribunal calls for interference.

4. Accordingly, the writ petition is allowed and the judgment passed by the learned tribunal dated 7th March, 2025, to the extent it remands the matter to the appropriate assessing authority and direct de novo assessment proceeding for the period 2009-10 is quashed.

5. 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

[CHAITALI CHATTERJEE (DAS), J.]