Item No. 01

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Chief Justice T.S. Sivagnanam
And
The Hon'ble Justice Chaitali Chatterjee (Das)

WP.TT 10 of 2025

Techmens Hydrocarbons Pvt. Ltd.
vs.
The Senior Joint Commissioner, Kolkata (South) Circle, & ors.

For the Petitioner	:	Mr. Anil Kumar Dugar, Adv. Mrs. Suman Sahani, Adv.
For the Respondents	:	Mr. Anirban Ray, G.P. Mr. T.M. Siddiqui, A.G.P. Mr. Tanoy Chakraborty, Adv. Mr. Saptak Sanyal, Adv.

Heard on : 26th June, 2025.

Judgment on : 26th June, 2025.

T.S. Sivagnanam, CJ.:

1) This writ petition has been filed by the petitioner-dealer challenging the order passed by the West Bengal Taxation Tribunal, Bidhannagar, Kolkata, in RN-15 of 2022 dated 3rd May, 2024. By the said order the revisional application filed by the petitioner challenging the order passed by the Senior Joint Commissioner, Commercial Taxes dated 10th December, 2021, was

dismissed. Aggrieved by the said order, the present writ petition has been filed.

2) We have heard the learned advocates appearing for the parties.

3) The petitioner was issued a certificate of settlement of dispute on 24th January, 2019, under the provisions of West Bengal Sales Tax (Settlement of Dispute) Act, 1999 (hereinafter referred to as 'the said Act of 1999'), pertaining to the period 2012-13. Subsequently, a notice was issued after about two years. Pursuant to the certificate of settlement of dispute it appears that the petitioner-dealer applied for refund of the excess tax paid. It is, thereafter, the authority issued a notice under section 12 of the said Act of 1999 proposing to revoke the certificate of settlement alleging that the petitioner had played fraud and furnished false information and obtained certificate of settlement. As could be seen from the facts the notice for revocation was issued only after the petitioner applied for refund of the excess tax paid based on the settlement which was arrived at. The short issue which is to be considered whether the petitioner had suppressed material information or particulars and whether the petitioner furnished incorrect and false information or particulars and obtained the certificate of settlement. From the impugned order we find the learned tribunal has not adjudicate into those facts which are required to be adjudicated to test the correctness of the order passed by the Senior Joint Commissioner, Commercial Taxes. The allegation against the petitioner is that a sum of Rs.6,41,965/- was already adjusted towards part of the tax liability for the year 2012-13 and therefore, the petitioner while furnishing information into the statutory form in serial No.11(c)(A) ought to have mentioned the said

figure and instead of that the petitioner had mentioned only Rs.2,51,640.26/- to be the actual amount paid. It is not in dispute that the adjustment which has been made by adjusting a sum of Rs. 6,41,965/- was without notice to the petitioner. In any event, the petitioner in column 11(c)(A) has to mention the actual amount paid. If the petitioner had no knowledge of adjustment he cannot be expected to disclose the amount which was adjusted by the authority on its own volition. The petitioner as per the statutory form is to require to disclose the amount actually paid which the petitioner had done so and the department had not disputed the same. Therefore, we find it is not a case where the petitioner had suppressed material information and/or furnishing incorrect and false information warranting cancellation of certificate of settlement of dispute. Further, if we examine the scope of the Act, more particularly, section 8, the proviso under sub-section (1) of section 8 provides for issuance of provisional certificate of settlement and such certificate was admittedly issued in favour of the petitioner-dealer. The proviso further empowers the designated authority within a period of three months following the month in which the application under section 5 is made to verify the correctness of the declaration made and the amount paid on the basis of such declaration, and if the designated authority finds any discrepancy in the declaration or finds any short payment of the amount payable for settlement, such authority shall issue a notice to the applicant asking him to rectify the discrepancy or to make payment of the amount short paid. This procedure was not adopted and the provisional certificate matured into a permanent certificate of settlement. Thus, the authority having been satisfied with the particulars furnished, no allegation against the applicant after a period of two years, certificate cannot be revoked for the reasons given by the authority that too when the process of such revocation commenced after an application for refund was filed by the petitioner. Rule 6 of the said Act of 1999 also provides for scrutiny of application and issue of notice in case of any discrepancy or short payment. Such procedure was also not adopted by the authority. Thus, revocation of certificate of settlement was erroneous and liable to be set aside.

4) Accordingly, the writ petition is allowed and the order passed by the tribunal is set aside and the order passed by the Senior Joint Commissioner dated 10th December, 2021, is set aside and the certificate of settlement dated 24th January, 2019, stands restored.

5) In the light of the above order, the assessing authority is directed to process the refund application filed by the petitioner which is kept pending and to take a decision in accordance with law.

6) Urgent photostat certified copy of this judgment, if applied for, be delivered to the learned advocates appearing for the parties upon compliance of all formalities.

(T. S. Sivagnanam, CJ.)

I agree.

[Chaitali Chatterjee (Das), J.]

RP/SM