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

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

HEARD ON: 15.07.2025

DELIVERED ON: 15.07.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

WP.TT 14 of 2025
Md. Mozammel Haque
Vs.
The State of West Bengal & Ors.

Appearance:-
Mr. Achin Jana
Mr. Prosenjit Ghosh
Ms. Jaysri Dhar
Ms. Chetna Rustagi ....for the writ petitioner

Mr. T.M. Siddique, Ld. Sr. Adv.
Mr. Tanoy Chakraborty
Mr. S. Shaw
Mr. S. Sanyal ....for the respondents

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. We have heard Mr. Achin Jana, learned advocate for the writ petitioner and Mr. T.M. Siddique, learned senior advocate appearing for the respondents.

2. This writ petition has been filed by a dealer registered under the provisions of the West Bengal Value Added Tax Act, 2003 (hereinafter referred to as the 'Act') challenging the order passed by the West Bengal Taxation Tribunal in R.N. 943 of 2019 dated 19th February, 2025.

3. The said application was filed by the writ petitioner challenging the assessment order dated 25th June, 2019 under section 46 read with section

66 of the Act on the ground that it was an *ex parte* order and no opportunity of hearing was granted to the writ petitioner.

4. The learned tribunal declined to entertain the application on the ground that the writ petitioner has an effective alternate remedy by way of an appeal before the appellate authority and accordingly, relegated the writ petitioner to avail the appeal remedy. Aggrieved by such order, the present writ petition has been filed.

5. As could be seen from the documents filed along with the stay application, the writ petitioner was issued a notice dated 30th May, 2017 under section 66(1)(a) & (c) of the Act, directing him to appear before the Sales Tax Officer, Cossipore Charge either in person or through an authorised agent on 14th June, 2017 at 1.30 p.m. and produce his books of accounts, registers, documents and statements relating to purchase and sales of goods; stock of goods held; payment made and received and receipt and delivery of goods made in the accounting period of 2016-2017, to justify the claim of the writ petitioner, as reflected in the returns.

6. On receipt of such notice, the writ petitioner appeared in person before the said authority on the date fixed i.e. 14th June, 2017 and produced the purchase register, purchase page ledger, sales register and stock statement. Though such documents were produced, the assessing authority did not proceed with the assessment nor fixed a date for personal hearing of the writ petitioner. After two long years, on 13th June, 2019, it appears that a draft assessment order was drawn and sent to the writ petitioner through e-mail.

7. According to the writ petitioner, he has not received the draft assessment order and the mode of service of the draft assessment order is not in

accordance with Rule 208(c) of the West Bengal Value Added Tax Rules. The assessing authority proceeded to complete the assessment *ex parte* by order dated 25th June, 2019, referring to the notice, which was given earlier i.e. on 30th May, 2017 and alleging that none appeared in terms of the said notice, which was issued to the writ petitioner and no books of account and other related documents in support thereof were produced. No objection was given to the draft assessment order and therefore, the proposal made in the draft assessment order was finalised and the assessment was completed.

8. The observation made by the assessing authority stating that the writ petitioner did not respond to the notice dated 30th May, 2017 is factually incorrect, as could be seen from the reply given by the writ petitioner dated 14th June, 2017 enclosing the relevant documents. This has been received in the office of the assessing authority, as could be seen from the seal affixed in the said letter dated 14th June, 2017.

9. Thus, it is evidently clear that there has been gross violation of the principles of natural justice. That apart, there is no explanation forthcoming on the part of the respondent authorities as to why the assessment was not completed for two years despite the writ petitioner having responded to the notice dated 30th May, 2017.

10. Therefore, we are of the view that the assessment has to be redone after due opportunity to the writ petitioner and after affording an opportunity of personal hearing to the writ petitioner and the documents, which were produced by the writ petitioner should be reconsidered, his oral submission should be heard and thereafter fresh assessment order shall be passed.

11. For the above reasons, the writ petition is allowed. The order passed by the learned tribunal is set aside and the assessment order dated 25th June, 2019 is set aside and the matter is remanded to the assessing authority with a direction to afford an opportunity of personal hearing to the writ petitioner/dealer, permit him to produce all documents and also make written submissions after completion of personal hearing.

12. The assessing authority should consider the documents already produced and those that may be produced by the writ petitioner at the time of personal hearing and pass a reasoned and speaking assessment order.

13. The entire exercise shall be completed within a period of six weeks from the date of receipt of server copy of this judgment and order.

14. The learned advocate appearing for the writ petitioner submitted that the writ petitioner is a very aged person and is not very familiar with the computers etc. and therefore, prays that the notice of hearing may be sent through post.

15. Considering the peculiarity of the facts, we direct the assessing authority to send notice of hearing to the writ petitioner by speed post with acknowledgement.

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.)