04.07.2025
Item No.3
Ct. No.01
RP/SM

WP.TT/15/2025

SAMSUR RAHAMAN
VS.
DEPUTY COMMISSIONER, SALES TAX BARASAT CHARGE AND ORS.

Mr. Somnath Roy Chowdhury, Adv.
...For the Petitioner

Mr. Anirban Roy, G.P.
Mr. TM. Siddiqui, A.G.P.
Mr. Nilatpal Chatterjee, Adv.
Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.
...For the State

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal dated 4th September, 2024, in RN-122 of 2024. The writ petitioner filed the said application before the learned tribunal challenging the draft assessment order as well as the final assessment order dated 21st February, 2024 and 19th April, 2024, on the ground that the writ petitioner/dealer having opted to be under the Composition Scheme under the provisions of the West Bengal Value Added Tax Act, 2003 could not have been taxed at higher percentage more than 3%. The learned tribunal was of the view that the application is not maintainable before it and the writ petitioner should avail the remedy available

under the Act by approaching the appellate authority.

2. This observation made by the learned tribunal is undoubtedly correct. Nonetheless the petitioner has raised an objection regarding the jurisdiction of Assessing Officer to impose higher rate of tax despite the fact that the petitioner is a dealer under the Composition Scheme. This aspect of the matter could be construed as one of the circumstances to bypass the statutory appellate remedy.

3. We have perused the draft assessment order as well as the final assessment order, from which it is clear that the writ petitioner/dealer has filed Return in Form-15, which is a Form prescribed for dealers who have opted under the Composition Scheme. If that be so, the Assessing Officer ought to have considered the aspect of the matter, though this point was not specifically pleaded by the writ petitioner while giving their objection to the draft assessment order. This being an issue touching upon the jurisdiction of the authority, we are of the view that the matter should be considered by the authority and fresh order should be passed.

4. For the above reason, the writ petition stands disposed of by directing the writ petitioner to treat the final assessment order dated 19th April, 2024 in Memo No.226 as a show-cause notice/draft assessment order and the writ petitioner is directed

to file their objection within three weeks from the receipt of server copy of this order. On receipt of the objections, the Assessing Officer, namely, the Deputy Commissioner, Sales Tax, Barasat Charge, Barasat, shall consider the said objections and pass fresh orders on merits and in accordance with law.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]