**Form No. J.(2)**
**Item No.1**
RP/PG AR(Ct.)

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

HEARD ON: 28.07.2025

DELIVERED ON: 28.07.2025

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

**WP.TT 21 of 2025**

**Raj Kumar Mondal, Proprietor of**
**'M/s. Abhilasha Exports'**
**Vs.**
**Tax Recovery Officer, Kolkata and**
**24 Parganas & Ors.**

**Appearance:-**
**Mr. Anil Kumar Duggar**
**Mr. Rituraj Chakraborty ..... for the petitioner**

**Mr. Tanoy Chakraborty**
**Mr. Saptak Sanyal ..........for the State**

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

1. This writ petition has been filed by a registered dealer under the provisions of the West Bengal Value Added Tax Act, 2003 (for brevity 'the Act') challenging the order passed by West Bengal Taxation Tribunal ('for brevity 'the tribunal') in RN-173 of 2022 dated 17th June, 2025. The said application was filed by the writ petitioner to quash/set aside the tax recovery proceeding initiated against them pursuant to an assessment order dated 27th May, 2019 passed by the Sales Tax Officer, Netaji Subhas Road Charge.

2. The case of the writ petitioner before the tribunal was that no notice was issued to the writ petitioner. The draft assessment order was not

communicated and an *ex parte* assessment order was passed and the *ex parte* assessment order was also not served on the writ petitioner.

3. The learned tribunal directed the respondent before it to furnish a copy of the assessment order and issued direction to the writ petitioner to file a statutory appeal. Aggrieved by such order, the writ petitioner has filed the present writ petition.

4. We have heard Mr. Anil Kr. Duggar, learned advocate for the writ petitioner and Mr. Tanoy Chakraborty, learned senior Government counsel appearing for the respondent.

5. On perusal of the assessment order, it is seen that it is an *ex parte* order. However, part of the ITC claimed by the writ petitioner has been allowed for the relevant year and the remaining has been rejected on the alleged ground that the seller has denied the sale transaction and due to non-availability of tax invoice and bank statement.

6. As could be seen from the materials, which were placed before the learned tribunal, the notices were sent to the writ petitioner through E-mail and no physical copies were served. However, the assessing officer records in the assessment order that the writ petitioner is not in existence at the place of business and therefore, the department sent the notices through E-mail.

7. More or less an identical stand was taken by the GST authorities, who cancelled the GST registration of the writ petitioner. This order was challenged by the writ petitioner by filing W.P.A. 507 of 2022, which was disposed of by directing the writ petitioner to avail the alternative remedy. Against the said order, an intra-Court appeal was filed in M.A.T. 80 of 2022, which was allowed by judgment dated 8th March, 2022 and the writ petitioner's GST registration certificate was directed to be restored.

8. Mr. Duggar, learned advocate appearing for the writ petitioner submitted that registration certificate has been restored and continues to be valid as on date. Therefore, for more or less on an identical reason, the State Tax Officer has passed an *ex parte* assessment order.

9. In any event, part of the ITC claim has been allowed and it is not clear as to how the authority was convinced to do so. However, with a view to afford one more opportunity to the writ petitioner, we are of the view that the matter should be remanded back to the assessing officer to consider the claim of ITC, which was rejected and the ITC claim, which was allowed shall remain intact.

10. Accordingly, the writ petition is allowed. The order passed by the learned tribunal is set aside and the assessment order dated 27th May, 2019 to the extent where ITC claim was disallowed as well as the purchase tax, which was levied is set aside and the matter stands remanded to the assessing officer.

11. The assessing officer shall afford an opportunity of personal hearing to the writ petitioner on 19th August, 2025, on which date the writ petitioner will be entitled to place written submissions, produce books of accounts and all details and documents and after considering all the particulars, which are furnished and the submissions made, the assessing officer shall pass fresh order with regard to ITC claim made by the writ petitioner.

12. The entire exercise shall be completed not later than 12th September, 2025.

13. The writ petitioner shall also be entitled to contest the claim of the levy of purchase tax under Section 17 of the Act and he will be entitled to make submissions on that aspect as well.

14. In the light of the above order, no coercive action shall be initiated against the writ petitioner for recovery of any demand that might have been issued.

15. No costs.

16. 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.)**