Form No. J.(2)
Item No.10
PG/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 20.08.2025

DELIVERED ON: 20.08.2025

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

F.MA. 1240 of 2025
With
I.A. No. CAN 1 of 2025

Kunal Mandal
Vs.
Assistant Commissioner of Revenue,
Berhampore Charge & Ors.

Appearance:-
Mr. Sandip Choraria
Mr. Akash Chakraborty
Mr. R. Manna
..... For the Appellant

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ....For the State

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 18th June, 2025 in W.P.A. 10508 of 2025 passed by the learned Single Bench declining to grant any interim order while directing affidavit-in-opposition to be filed in the writ petition.

2. Since the issue raised in the writ petition as well as in this appeal lie in a very narrow campus, with the consent of the learned advocates on either side, the appeal and the writ petition are taken up for disposal and are disposed of by this common judgment and order.

3. We have not ventured to examine the merits of the matter but, only on the technical plea that the show-cause notice was issued to the appellant alleging mismatch and excess ITC has been availed, we assail the order.

4. According to the appellant, he missed noticing the show-cause notices, which were uploaded in the portal and, therefore, did not appear before the authority and filed objections to the show-cause notice. This lead to an *ex parte* order being passed under Section 73 by the Assistant Commissioner, Berhampore.

5. Assessee preferred appeal before the First Appellate Authority, who rejected the appeal. The appellate authority has noted the grounds raised by the appellant in the appeal petition, wherein it appears that the appellant has accepted the mistake with regard to the entries made under the relevant returns. However, there is a finding rendered by the appellate authority that though the appellant had an opportunity to rectify his mistake by submitting annual return but, no such rectification was made.

6. Before us, the copy of the annual return has been placed. As rightly pointed out by the learned Government Counsel appearing for the respondent, this plea was not raised by the appellant before the appellate authority and had it been canvassed in such forum, the appellate authority would have taken note of the same and dealt with the contentions in accordance with law.

7. The appellant was also not vigilant to submit his reply to the show-cause notice. Thus, part of the problem, which the appellant has been put to is on account of his own conduct.

8. Be that as it may, if the annual return has been uploaded, as could be seen from page 83 of the stay petition, then the authority can consider the same, more particularly, when the appellant has an explanation as to why the mistake has occurred.

9. Therefore, considering the peculiar facts and circumstances of the case, we are inclined to remand the matter back to the Assistant Commissioner namely, the adjudicating authority for fresh consideration after taking note of the annual return, which was filed by the appellant on 30th September, 2020.

10. For the above reasons, the appeal as well as the writ petition are allowed. The order passed by the appellate authority as well as the Assistant Commissioner are set aside and the matter stands remanded back to the Assistant Commissioner for fresh consideration, who shall afford an opportunity of personal hearing to the authorized representative of the assessee taking note of his submissions and in particular, the annual return, which is said to have been filed and pass fresh orders on merits and in accordance with law.

11. No costs.

12. 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.)