Form No. J.(2)
Item No.7
Pallab/KS AR(Ct.)

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

HEARD ON: 02.09.2025

DELIVERED ON: 02.09.2025

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

M.A.T. 1366 of 2025
With
I.A. No. CAN 1 of 2025

P G Exim Private Limited & Anr.
Versus
The State of West Bengal & Ors.

Appearance:-
Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. Gaurav Chakraborty
Mr. Animitra Roy
Mr. Piyaj Choudhury
……….For the Appellants
Mr. Amitabrata Roy, Ld. G.P.
Mr. Nilotpal Chatterjee
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 is directed against the order dated 4th August, 2025 in W.P.A. 4696 of 2025 in and by which the learned Single Bench found that the appellants had made out a prima facie case and granted stay of the demand raised against the appellants, which was impugned in the writ petition.

2. The learned advocate appearing for the appellants submits that though the appellants do not have any grievance against the order passed by the

learned Single Bench, which enures in favour of the appellants, it is the submission of the learned advocate appearing for the appellants that on account of certain facts, which were not within the knowledge of the appellants during the earlier round of litigation and also when a statutory appeal was filed before the appellate authority, a prayer is made that the matter may be sent back to the original authority for fresh consideration.

3. It is further submitted that the interest of revenue has been adequately protected since nearly 75% of the disputed tax has already been recovered.

4. We have heard the learned Government Counsel on the above submissions.

5. Considering the fact that the dispute lies in a very narrow campus and the interest of revenue also stands protected, no useful purpose would be served by keeping the writ petition pending any longer and it will be beneficial to both sides if the matter is remanded to the adjudicating authority for a fresh decision on merits and in accordance with law.

6. With the consent of the learned advocates on either side, the writ petition as well as the appeal are disposed of by this common judgment and order.

7. The appellants' contention is that the 3rd respondent passed the appellate order and summary of demand and stated that the appeal petition stands disposed of and modified and directed to pay the tax totalling a sum of Rs.6,82,824/-.

8. The appellants would submit that had the appellate authority checked the adjudication records by calling for the same, the appellate authority could have ascertained that the proceedings initiated pursuant to the show-cause notice in Reference No. ZD1902230087977 was dropped vide a proceeding of the Assistant Commissioner dated 11th December, 2023 in terms of Section 73(7) of the Act. The order states that the reasons for dropping the

proceedings and other details are annexed to the said order, however, in the annexure, the summary of the order dated 26th July, 2023 has been enclosed but not the summary of the order dropping the proceedings.

9. It is submitted that the appellant was not aware of this fact when the appeal was filed and therefore, it is submitted that had the appellate authority called for the adjudication file, this would have been evident and no recovery could have been effected from the assesse, rather the assessee would be entitled for refund as according to the assessee, the total tax payable by them is only Rs.9,814/- under the C.G.S.T. and corresponding amount in W.B.G.S.T.

10. Considering all these facts, we dispose of this appeal as well as the writ petition by setting aside the order passed by the appellate authority as well as the adjudicating authority and remand the matter back to the Assistant Commissioner, N. S. Road, Burrabazar, West Bengal for a fresh decision.

11. In order to afford an opportunity to the appellants, the appellants are directed to submit their additional reply with all facts and figures and the documents in support of their claim. On receipt of the additional reply, the concerned authority shall afford an opportunity of personal hearing to the authorized representative of the appellants, conduct a *de novo* proceeding and pass fresh orders on merits and in accordance with law.

12. While doing so, the adjudicating authority shall also examine the effect of dropping of the proceedings pursuant to the order dated 11th December, 2023 and other grounds that may be canvassed by the appellants.

13. As mentioned above, 75% of the disputed tax has already been recovered, in the light of the order of remand passed in this appeal and the writ petition, the said amount, which has been recovered, shall be treated as a

deposit and abide by the final orders that may be passed by the adjudicating authority.

14. The appellants are directed to submit an additional reply within a period of three weeks from the date of receipt of server copy of this order, after which, the adjudicating authority shall fix a date for personal hearing and pass fresh orders on merits and in accordance with law within a period of six weeks from the date on which the personal hearing is concluded.

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.)