11.03.2025
Item No.15
Ct. No.01
RP/SM

MAT 2013 of 2024
with
CAN/1/2024
with
CAN/2/2024

Axis Bank Ltd.
Vs.
State of West Bengal and Ors.

Mr. Prakash Shah, Sr. Adv. (Through V.C.)
Mr. Mihir Deshmukh, Adv.
Mr. Dipankar Majumdar, Adv.
Ms. Aishi Pal, Adv.
....For the Appellant

Mr. Anirban Ray, G.P. (Sr. Adv.)
Mr. Md. T.M. Siddiqui, A.G.P. (Sr. Adv.)
Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.
....For the State-Respondent

In Re: CAN/1/2024

1. This intra-court appeal has been filed by the writ petitioner challenging the order dated 19th December, 2022 passed in WPA 25813 of 2022. The said writ petitioner was filed challenging the order passed by the West Bengal Commercial Taxes Appellate and Revisional Board dated 4th August, 2022 by which order the Revisional Board affirmed the order passed by the Appellate authority, namely, Senior Joint Commissioner, Sales Tax, LTU dated 29th March, 2018, which appeal was filed against the assessment order for the Assessment Year 2014-15 by the Joint Commissioner of Commercial Taxes, Corporate

Division. The learned Writ Court dismissed the writ petition holding that there are no merits in the writ petition and there cannot be review of an order of review. The appeal is time-barred. There is a delay of 599 days. The appellant has filed an affidavit explaining the reason for such delay supported by a supplementary affidavit and the respondents have filed their affidavit-in-opposition.

2. Considering the reasons which have been pleaded in the affidavit filed by the appellant, we do not think that the instant case is a case where the appellant had slept over his right nor there was any lack of diligence, more particularly, when the appellant is a bank having branches throughout the country and it is stated the matter pertains to taxation is dealt by the Mumbai office and the learned advocate who appeared in the writ petition had not intimated the concerned officer who had subsequently resigned and had no knowledge of the writ petition having been dismissed by the impugned order though the respondent department has raised serious objections to the prayer for condonation of delay.

3. Considering the fact that the learned Single Bench has not assigned any reason for rejecting the writ petition, more particularly when the appellant does not have any other alternate remedy against the order passed by the Revisional Board and the court

is required to examine the correctness of the Revisional Board and considering the other cumulative circumstances, this court is inclined to exercise discretion in favour of the appellant and accordingly, the same is exercised and delay is condoned and the appellant is allowed.

<u>In Re: MAT/2013/2024</u>

4. The issue which is involved in the instant case lies in a very narrow campus. The appeal which was preferred under section 84 of the West Bengal Value Added Tax Act on account of non-submission of declaration forms to the extent of Rs.59,03,20,837/-. It is not in dispute that during the appeal proceedings the appellant had submitted 'F Forms' obtained from the State of Uttar Pradesh amounting to Rs.43,70,62,816/- and provided detailed explanation for stock transfer amounting to Rs.15,32,58,021/- which is stated to have disclosed in the return filed for the period July to September, 2014. The fourth respondent had accepted and dropped the tax demand to that extent. However, with regard to non-submission of 'Form-F' of declaration concerning stock transfer to the State of Orissa amounting to Rs.7,54,71,576/- was confirmed. Admittedly, the Revisional Board while rejecting the revisional accepts the fact that the appellant has produced the 'Form-F' for declaration

to the value of Rs.75,47,15,76/- but has blamed the appellant for producing it at that stage. More or less an identical issue was considered by us in the case of ***M/s. N.P. Trading Company vs. Deputy Secretary, Government of West Bengal and Ors.,*** passed in ***WP.TT/3/2025*** dated 25th February, 2025. In the said case the matter pertains to non-submission of Forms for declaration by the selling dealer when the purchasing dealer who was stationed in the State of Jharkhand did not apply for the 'Form-C' declaration. The court analysed the purpose for which such declaration has been provided for namely, as to the benefit of concessional rate of tax or some other benefits to the assessee, more particularly when in the said case the inter-state sale transaction was not in dispute, issued appropriate direction to enable the appellant therein to get the benefit of concessional rate of tax. In the said decision we had relied upon an earlier decision in the case of ***Commissioner of Commercial Taxer & Another vs. M/s. Tata Steel Limited & Others*** passed in ***F.M.A. 857 of 2022***. This decision was appeal against before the Hon'ble Supreme Court and subsequently the Special Leave Petition was withdrawn as the State of West Bengal accepted the decision. Thus, the law having been well-settled in this issue, especially when declaration is to be submitted by the tax payer, sufficient latitude and flexibility has to be given and in the instant case the appellant is in possession of the 'Form-F' declaration opportunity should be granted to the appellant to produce the same before the jurisdictional Assessing Officer.

5. For the above reasons, the appeal and the connected application are allowed and the order passed in the writ petition is set aside and the writ petition is allowed and the orders passed by the Revisional Board, the First Appellate Authority and the Assessing Officer, namely, the Joint Commissioner of Commercial Taxes, Corporate Division, are set aside and the matter is remanded to the said authority, namely, the Assessing Officer and the appellant is directed to produce the 'Form-F' declaration within a period of two weeks from the date of receipt of the server copy of the order after which the Assessing Officer shall verify the 'Form-F' declaration and proceed to take action in accordance with law after affording an opportunity of personal hearing to the authorised representative of the appellant.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]