18.02.2026
Item No.10 (DL)
Court No.551
AJ.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

W.P.A. 9962 of 2024

CAN 1 of 2024
(Disposed of on 03.12.2024)

N S United Kaiun Kaisha Limited
-Vs-
Union of India & Ors.

Ms. Anupa Banerjee,
Ms. Mayuri Ghosh,
Mr. Ratul Deb Banerjee.
…for the petitioner.

Mr. Bishwambher Jha,
Mr. H.K. Jha.
…for the Union of India.

Mr. Prithu Dudharia.
…for the Income Tax Authorities.

1. This writ petition has been filed seeking issuance of a writ of mandamus commanding the respondent Revenue Authorities to refund a sum of Rs.23,70,801/- in terms of an order dated December 13, 1996 as modified by an order dated July 21, 1997 passed by the Income Tax Appellate Tribunal in an appeal preferred by the appellant against an order passed by the Commissioner under Section 263 of the Income Tax Act, 1961.

2. It is the petitioner’s case that the order passed by the Tribunal was carried in reference before this Court but the reference ultimately fell through in view of the CBDT Circular dated July 11, 2018. The petitioner contends that upon the reference being dismissed the order of the

Tribunal attained finality and as such the petitioner became entitled to refund.

3. Accordingly, the petitioner applied for refund but the amount claimed as refund has not yet been paid by the Revenue Authorities to the petitioner, hence the writ petition.

4. In course of hearing of the writ petition, a report was called for from the respondent Revenue Authorities. From the said report, it appears that a letter dated February 19, 2024 had been issued by the Revenue Authorities to the petitioner calling upon the petitioner to furnish certain documents. The petitioner contends that most of the documents asked for by the Revenue Authorities are not available with the petitioner. The Department on the other hand contends that since the required documents i.e. copy of the income tax return filed by the assessee for the relevant assessment year, original/certified copy of the order of assessment dated March 30, 1988 under Section 143(3) read with Section 44(b) of the said Act of 1961 the order to "give effect" to the order under Section 254 of the said Act of 1961 and previous correspondences of the assessee, all pertain to a period of time more than two to three decades back, therefore the Department is also not in possession of the said records.

5. In such a peculiar situation, it is difficult even for the writ Court to arrive at a clear finding.

6. If the petitioner is entitled to refund, the petitioner should not be denied refund. At the same time, the petitioner who claims refund must be vigilant enough to maintain documents which would be required for the petitioner to justify its claim. Alongside, since the reference that was carried to this Court was dismissed only on July 31, 2019, therefore the Department should also not shirk its responsibility by saying that no document whatsoever is available with the Department.

7. A meaningful solution to the stated problem is therefore required. Calling for affidavits in the present case would not serve any purpose. This Court therefore deems it fit to remit the matter back to the Principal Chief Commissioner of Income Tax West Bengal & Sikkim (hereafter "PCCIT") who would authorize a competent officer to look into the matter and come up with a proper solution to the problem posed.

8. Accordingly, it is directed that the PCCIT shall appoint/nominate a competent officer of the rank of Commissioner of Income Tax or above for the aforesaid purpose. Such officer shall devise an appropriate mechanism and conduct relevant enquiry for reaching a solution to the problem at hand. The competent officer aforesaid, shall within a week of its appointment issue notice to the petitioner calling upon the petitioner to present its case before the said officer. The petitioner shall then be entitled to state its case before the said competent

officer. Such competent officer shall thereafter decide the matter pertaining to the refund claim of the petitioner, in accordance with law.

9. The competent officer shall take an informed decision and ensure that if the petitioner is indeed entitled to any refund, the same is not denied.

10. Such authority shall pass a reasoned order, in accordance with law as expeditiously as possible and preferably within a period of four weeks from the date of his appointment by the PCCIT in terms of this order. Such order shall be communicated to the petitioner within a week of passing thereof.

11. It is clarified that this Court has not gone into the merits of the petitioner's claim of refund and all points are left open to be urged by the petitioner before the competent authority and to be decided by the competent authority in accordance with law.

12. WPA 9962 of 2024 stands disposed of with the above observations. No costs.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)