

Form No. J.(2)
Item No.7

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

HEARD ON: 07.05.2024
DELIVERED ON: 07.05.2024

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 854 of 2024
With
IA No. CAN 1 of 2024**

**Roshan Sharma
Vs.**

Assistant Commissioner of Revenue, State Tax, West Bengal & Ors.

Appearance:-

**Mr. Vinay Kumar Shraff
Ms. Priya Sarah Paul
Mr. Dev Kumar Agarwal**

.....for the appellant

**Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. S. Sanyal**

.....for the State

JUDGMENT

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

1. We have heard the learned advocates for the parties.
2. With the consent of the learned advocates of either side, the appeal and the writ petition are taken up for disposal and are disposed of by this common judgment and order.
3. The appellant had filed the writ petition challenging an adjudication order passed by the Assistant Commissioner of Revenue, State Tax, West Bengal, Strand Road, Chinabazar and Rajakatra Charge dated 1st February, 2024. By the said order, the proposal in the show-cause notice dated 3rd November, 2023 was affirmed

and tax of Rs.2,82,32,394/- (CGST & SGST) along with interest and penalty was demanded.

4. It is no doubt true that the appellant has an effective alternate remedy by way of an appeal before the statutory appellate authority for which the appellant has to pre-deposit 10% of the disputed tax. However, in the facts and circumstances of the case, we are satisfied that the appellant has not been given an effective opportunity to rebut the allegations, which have been made against the supplier and the transporter from whom statement/declaration has been obtained by the authority.
5. Admittedly, the appellant has not been furnished with copies of the same nor has been afforded an opportunity of cross-examination, though such a request was specifically made by the appellant in his reply dated 18th December, 2023.
6. That apart, the appellant has stated that the cancellation of the registration of the selling dealer was done with retrospective effect and on the date on which the transactions were done by the appellant, the registration of the selling dealer was very much valid. Even assuming the same to be factually correct, still the onus is on the appellant to prove movement of goods.
7. The learned advocate for the appellant would vehemently contend that there are bunch of e-way bills, which clearly show the transportation of goods to various purchasers from the appellant and such e-way bills cannot be rejected as fake since, there are statutory documents and will be available in the portal of the department.
8. Thus, considering the fact that the appellant had no opportunity to cross-examine Mr. Shyam Sundar Tiwari or Mr. Ashoke Kumar Saha and the statement recorded from them were not furnished to the appellant, this is a fit case, where

the matter should be remanded to the adjudicating authority for a fresh decision after affording an opportunity to the appellant.

9. Accordingly, appeal and the writ petition as well as connected application are allowed and the order of adjudication dated 1st February, 2024 is set aside with a direction to the adjudicating authority to furnish copies of the statement/declaration obtained from Mr. Shyam Sundar Tiwari or Mr. Ashoke Kumar Saha to the appellant within a week from date and the adjudication shall be completed as expeditiously as possible preferably within a period of 60 days from date and the appellant is entitled to submit his further explanation along with the necessary documents and if the appellant requests for cross-examination of those persons, the same should be permitted and thereafter, the adjudicating authority shall pass fresh orders on merits and in accordance with law.
10. It is admitted by the appellant that there is a negative balance in the credit ledger. Therefore, as on date, the blocking of such ledger will not in any manner prejudice the appellant. However, it is made clear that in case funds flow into the ledger, the blocking of the ledger shall be restricted to a sum of Rs.2,82,32,394/- only.
11. The appellant is bound to prove by proper evidence to establish the movement of goods (purchase/sales).
12. No costs.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)