Item No.1.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

HEARD ON: 29.03.2022.

DELIVERED ON:29.03.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPTT 3 of 2022

Gammon India Limited & Anr.
VERSUS
Sales Tax Officer, Bhawanipur Charge & Ors.

Appearance:-
Mr. Biswajit Mukherjee,
Mr. Sandip Choraria,
Mr. Hjimangshu Kr. Ray,
Mr. Sukalpa Seal .....for the Petitioners

Mr. Anirban Ray, ld. G.P.,
Mr. T. M. Siddique,
Mr. Debasish Ghosh .. for the respondents/State.

JUDGMENT

(Judgment of the Court was delivered by* HIRANMAY BHATTACHARYYA, *J.)

1. The petitioners have challenged the order dated December 20, 2021 passed by Three Member Bench- I, West Bengal Taxation Tribunal (for short "the tribunal") in RN-953 of 2021 whereby

leave was granted to the revenue to file a CAN application challenging the orders of the Board.

2. The learned Advocate appearing for the petitioners submits that the petitioners filed an application being RN-953 of 2021 before the tribunal under Section 8 of the West Bengal Taxation Tribunal Act, 1987 (for short "the Act") praying for implementation of the order passed by the Revisional Board. In connection with such application, the State revenue authority took out an application under Regulation 16 of West Bengal Taxation Tribunal Regulations, 1989 (for short "the Regulations") pursuant to the leave granted by the tribunal praying for quashing or modifying the order dated August 10, 2018 passed by the Revisional Board. He further submits that since the revenue authority seeks to challenge the order passed by the Revisional Board, they cannot challenge the same by filing a Miscellaneous application but has to challenge the order passed by the Revisional Board by filing an application under Section 8 of the Act before the tribunal. In support of such contention, he places reliance on the provisions laid down in Sections 7 and 8 of the Act and contends that a person aggrieved by any order passed or action taken pertaining to any

matter within the jurisdiction of the tribunal may make an application to it for the redressal of his grievances on any of the grounds mentioned in sub-Section (3) of said Section.

3. Mr. Debasish Ghosh, learned Advocate representing the State refers to the Regulation 16 of the Regulations and submits that any person or authority, who is or has been a party to a proceeding before the tribunal may make an application for setting aside an order passed by an authority under the specified Act. He laid special emphasis on the term "setting aside" used in clause (a) of regulation 16(1) in support of such contention. He further submits that such regulation has been framed in terms of the power vested to the State Government under Section 4 of the Act.

4. We have heard the learned Advocates for the parties and have perused the materials on record.

5. Regulation 16(1) of the Regulations, provides that any person or authority, who is or has been a party to a proceeding may make an application for grant, extension, discharge, variation or setting aside or interim order pending disposal of

the proceeding. Thus, if a party to a proceeding before the tribunal is aggrieved by any order passed by such tribunal in course of the proceeding, such party can file a Miscellaneous Application before the tribunal but the same cannot be construed to be conferring a right upon the revenue to seek quashing of an order passed by the Revisional Board under the specified Act by filing a Miscellaneous application.

6. Clause (a) of Regulations 16(1) provides the nature of relief which may be sought for by a party and may be passed by the Tribunal on a miscellaneous application being filed. The said Regulation contains an expression "pending disposal of the proceeding" which shall be the guiding factor for deciding the nature of the relief which may be passed by the tribunal on a Miscellaneous application. On a plain reading of the said Regulation it is evident that the nature of the relief contemplated under clause (a) of Regulation 16(1) is a relief which is other than a final relief as the various mode of the relief specifically described in the said Regulation is followed by the aforesaid expression. Thus, the relief that may be granted on a miscellaneous application shall operate only during the pendency of the proceeding before the tribunal. Such reliefs

are for the purpose of protecting the rights and interests of the parties during the pendency of the proceeding before the tribunal. Thus, this court is of the considered view that the nature of the relief contemplated under clause (a) of the said Regulation 16(1) is interim in nature.

7. The Black's Law Dictionary defines the word "set aside" to mean annul or vacate. Thus, the word "setting aside" used in clause (a) of the said Regulation necessarily means that a party to a proceeding before the tribunal can file a miscellaneous application praying for annulment or vacating any order and the relief which may be granted is interim in nature. Section 8 of the Act vests the power upon the tribunal to entertain a challenge at the instance of a person aggrieved against an order passed or action taken by an authority under any specified State Act and the tribunal while deciding the subject matter has the power to issue direction or pass such order as it may deem fit. Any contrary interpretation to the word "setting aside" would make the Regulation framed under the Act inconsistent with the provisions of the Act which is against the mandate of Section 4 of the Act.

8. The State revenue authority sought to quash the order dated August 10, 2018 passed by the Board, which is an order amenable to challenge under Section 8 of the Act. The relief sought for in the said application is final in nature for which recourse to Regulation 16 is not permissible for the reasons as stated hereinbefore. Thus, this court is of the considered view that the miscellaneous application being CAN 28 of 2022 was not maintainable and the grant of leave by the tribunal to file a miscellaneous application without considering its maintainability was improper.

9. Thus, this Court is of the considered view that a challenge against an order passed by the Revisional Board ought to have been made by filing an application under the relevant provisions of the West Bengal Taxation Tribunal Act and not by resorting to Regulation 16 of the said Regulations as contended by the learned Advocate for the State.

10. Thus, this Court holds that the learned Tribunal erred in granting leave to the revenue to file the application being CAN 28 of 2022. The leave granted to the revenue vide order dated December 20, 2021 is set aside and quashed. The application

being CAN 28 of 2022 filed by the revenue pursuant to such leave also stands dismissed being not maintainable.

11. This order will not, however, create a bar in taking out an appropriate application in accordance with law, if so advised.

12. Accordingly, the writ petition stands disposed of.

13. No costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

I agree.

(T.S. SIVAGNANAM, J) **(HIRANMAY BHATTACHARYYA, J.)**

NAREN/PALLAB(AR.C)