

W.P.T.T. 1 of 2023

**Pacharia Exports Private Limited
Vs.
The Special Commissioner, Commercial Taxes,
West Bengal & Ors.**

Mr. Govind Jethalia
Mr. Rajarshi Chatterjee
Mr. Anil Dugar

... ... for the petitioner

Mr. Anirban Ray, GP
Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

... ... for the State

1. This writ petition has been filed challenging the order passed by the West Bengal Taxation Tribunal. There were batch of cases before the tribunal and the present writ petitioner was also one of the parties in the said appeal before the tribunal namely, Pacharia Exports Private Limited.
2. Two grounds were canvassed by the writ petitioner before the learned tribunal. The first ground being that the Assessing Officer while passing the order of assessment dated 27.06.2011 had allowed the claim of ITC made by the writ petitioner. But, however, denied the same in respect of the export transaction.
3. The petitioner being aggrieved by such order, preferred an appeal to the appellate authority and the appellate authority by order dated 23.05.2015 allowed the appeal. Thereafter, the Special Commissioner, Commercial Taxes, West Bengal exercised his power of suo motu revision under section 85 and set aside

the assessment order dated 27.06.2011 in so far as it grants the claim of ITC by the writ petitioner.

4. It is contended that in terms of Rule 142 of the West Bengal Value Added Tax Rules, 2005 the functional jurisdiction of the revisional authority under section 85 or section 86 of the West Bengal VAT Act has been stipulated in terms of clause (a) of sub-rule 1 of rule 142 the authority who is entitled to issue suo motu revision order of the assessing authority is the Deputy Commissioner of a Joint Commissioner or a Senior Joint Commissioner and the Special Commissioner has no jurisdiction.
5. More so, when the appellate order in so far as the aspect relating to ITC is concerned did not merge with the original assessment order since the assessing officer has already granted relief to the writ petitioner.
6. This issue was considered by the learned tribunal and in our view rightly by pointing out that the appellate authority has all the powers as that of assessing officer inasmuch as the appellate authority not only confirm or null the demand but enhanced the demand also by modifying the assessment order and modification by way of enhancement could be based on examination of the books of accounts, other submissions, etc.
7. Furthermore, the learned tribunal had rightly pointed out that the subordinate authority namely, Deputy

Commissioner or the Joint Commissioner or the Senior Joint Commissioner could not have the authority to undertake a suo motu revisional exercise when the writ petitioner had filed the statutory remedy of appeal before the appellate authority and therefore it was held that the Senior Joint Commissioner had rightly exercised the power of suo motu revision. Section 85 of the West Bengal VAT Act deals with suo motu revision by the Commissioner. Sub-section (1) of section 85 states that subject to such rules as may be made and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise a provisional assessment order or any other assessment order.

8. The other contention raised was that the Special Commissioner is not the appropriate authority to exercise such powers. Section 4 of the West Bengal VAT Act defines what is a Special Commissioner. Sub-section (1) states that the State Government may appoint one or more persons to be the Special Commissioners of Sales Tax. Sub-section (2) states that the Special Commissioner shall have such powers and shall be entitled to perform such duties, of the Commissioner as the State Government may, by notification, specify.
9. The State Government by Notification No.790-F.T., dated 31.03.2005 has appointed the Special

Commissioner to exercise all powers of such duties of the Commissioner of Sales Tax, except those under sub-section (4) of section 3, proviso to clause (a) of sub-section 5 of section 22 and sub-section (13) of section 93 as are vested on him under the said Act. This Notification came into force with effect from 1st April, 2005. Therefore, for all purposes, Special Commissioner is the Commissioner of Sales Tax.

10. If this definition is borne in mind, then a clearer picture emerges upon retention of section 85 of the Act which gives power to the Commissioner to exercise the power of suo motu revision. In the light of the definition of Special Commissioner and the Notification issued by the Government, the Special Commissioner shall be deemed to be the Commissioner for all purposes under section 85 of the Act.
11. The contention of the learned counsel for the writ petitioner is by referring to rule 142 of the 2005 rules and stating that in terms of clause (a) of sub-rule (1) of rule 142 it is only the Deputy Commissioner or the Joint Commissioner or the Senior Joint Commissioner can exercise power of suo motu revision against an order of the Assistant Sales Tax Officer or Sales Tax Officer.
12. In our opinion this issue has become academic. More so, when as against the assessment order the

writ petitioner had filed an appeal and when the matter was fixed at the appellate stage, an authority who is junior than the appellate authority can obviously not exercise this power of suo motu revision. Above all a Senior Commissioner who is none other than the Commissioner of Sales Tax being a superior authority has sufficient jurisdiction to exercise the power of suo motu revision.

13. Therefore, the said ground raised by the writ petitioner does not appear consideration and accordingly stands rejected.
14. The second aspect of the matter which was argued by the learned counsel for the petitioner is that the Input Tax Credit could not have been denied to the petitioner on account of payment made to third party on behalf of the selling dealer.
15. It is a well settled legal principle that Input Tax Credit is a form of concession provided by the legislator and it is available only if the conditions stipulated are fulfilled. Sub-rule(8) of rule 19 makes it clear that the payment has to be made to the selling dealer by means cheque or demand draft or by means of electronic mode. Therefore, the writ petitioner is precluded from adding words to a statute to state that he will be entitled to the benefit of Input Tax Credit though he is not paid the amount to the selling dealer but to a third party based on certain instructions. The

concession can always comes with conditions and if the conditions are not fulfilled the concession is not available. Therefore, the conclusion arrived at by the tribunal in this regard deserves to be confirmed.

16. For the above reasons, no grounds have been made out by the petitioner to interfere with the order passed by the learned tribunal.
17. Accordingly, the writ petition fails and stands dismissed.
18. No order as to costs.

(T.S. Sivagnanam, C. J.)

(Supratim Bhattacharya, J.)