

Form No. J.(2)  
Item No. 12

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

HEARD ON: 21.05.2024

DELIVERED ON: 21.05.2024

**CORAM:**

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNAMAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA  
M.A.T. 939 of 2024  
With  
IA No. CAN 1 of 2024**

**Ankit Kumar Agarwal,  
Proprietor of business namely  
Ambika Trading Company  
Vs.**

**The Assistant Commissioner of State Tax,  
Taltala Charge & Ors.**

**Appearance:-**

**Mr. Rajeev Kumar Agarwal**

**Mr. Sanjay Dixit**

**Mr. Siddharth Agarwal**

**Mr. Suman Sahani**

**...for the appellant**

**Mr. Anirban Ray, Ld. GP**

**Mr. T.M. Siddique**

**Mr. Tanoy Chakraborty**

**Mr. S. Sanyal**

**.....for the State**

**JUDGMENT**

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 4<sup>th</sup> April, 2024 in W.P.A. 7869 of 2024 by which the challenge to the adjudication order passed by the authority dated 15<sup>th</sup> December, 2023 was rejected directing the appellant to avail the statutory appellate remedy. The appellant being aggrieved by such order, has preferred the present appeal

2. We have elaborately heard the submission of Mr. Agarwal, learned advocate appearing for the appellant and Mr. T.M. Siddique, learned counsel appearing for the State assisted by Mr. Tanoy Chakraborty, learned counsel.
3. The short issue, which falls for consideration is whether the annual return filed by the appellant in GSTR-9 for the financial year 2017-18 can altogether be ignored.
4. At the earliest point of time, the appellant by letter dated 13<sup>th</sup> September, 2018 addressed to the officer concerned gave a clarification stating that they have filed GSTR-3B return for the period from October 2017 to March 2018, which does not include both Input and Output Cess and they have filed GSTR-1 for the month of October 2017, which does not include Cess but have filed GSTR-1 for November, 2017 to March, 2018, which includes Cess @ 5% and Cess (Specified) amount. The appellant submitted a statement of Cess @ 5% and Specific Cess with all the Input, Output and carried forward amounts for the kind consideration of the officer.
5. Subsequently, another communication was sent on 10<sup>th</sup> February, 2020 bringing to the notice of the department certain information as contained in GSTR Form-9. The appellant stated that during preparation of data for GSTR-9, it was noticed by him they have inadvertently missed certain output GST liability on account of Compensation Cess from GSTR-3B returns for the relevant financial year and has also missed equivalent amount of Input tax credit of Cess for such supplies. It was further stated that while filing GSTR-9, they have corrected the error by showing the exact amount of compensation Cess payable by them during the said period as could be seen from Table 4A of GSTR-9.

6. The appellant further stated that they have shown the actual amount of ITC on compensation Cess in GSTR-9 return filed by them as can be seen from table 6b of the said GSTR-9. Further, it was stated that Input Tax Credit is also matching with the auto populated figures of GSTR-2A.
7. The appellant stated that the error was unintentional as GST was a new tax at the relevant time and he is a small assessee and there was no revenue loss to the Government as the entire exercise was revenue neutral and also there was no gain to the appellant by showing incorrect figures in their returns as they have sufficient balance of Input Tax Credit for the same. Therefore, it was submitted that the error was not unintentional, it was without any ulterior motive and *mens rea* or intent to evade tax. Therefore, the authority was requested to take into consideration the same. However, in the pre show-cause notice, intimation, which was given on 6<sup>th</sup> September, 2022, the authority was not inclined to do so and as requested by the appellant on the ground that the GSTR-3B was not rectified within the time permitted.
8. Once again, the appellant submitted representation but however, the adjudicating authority in the order dated 15<sup>th</sup> December, 2023 maintained the same stand.
9. In our considered view, two aspects have appealed to us to send back the matter to the adjudicating authority. First is with regard to the effect of GSTR-9. This being an annual return filed within the extended period of limitation viz. , upto 7<sup>th</sup> February, 2020 on account of various notifications issued by the Government due to the Covid pandemic. Therefore, if the GSTR-9, which was filed within time is not considered, the assessee's rights would

be greatly prejudiced. The second aspect, which has persuaded us is the contention of the assessee that the entire matter is revenue neutral.

10. Thus, considering the peculiar facts and circumstances of the case making it clear that this order should not be treated as a precedent, we are inclined to remand the matter back to the adjudicating authority viz. , the Assistant Commissioner, State Tax, Taltala and New Market Charge to consider the submissions made by the assessee, afford an opportunity of personal hearing, examine the annual return filed in GSTR-9 and proceed to take a fresh decision on merits and in accordance with law.
11. With the aforesaid directions/observations, the appeal and the connected application are disposed of.
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.)**