

GAHC010060602024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1788/2024

M/S TULSHYAN ELECTRICALS
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT BARPETA ROAD,
BARPETA- 781315, ASSAM, REPRESENTED BY ITS PROPRIETOR, SRI ATUL
AGARWAL, RESIDENT OF BARPETA ROAD, BARPETA, ASSAM- 781315

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FINANCE AND TAXATION DEPARTMENT,
BLOCK-F, ASSAM SECRETARIAT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER OF STATE TAXES
ASSAM
KAR BHAWAN
G.S.ROAD
DISPUR
GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER OF STATE TAXES
BARPETA ROAD-1
GUWAHATI ZONE-B
ASSAM
KAR BHAWAN
G.S.ROAD
DISPUR
GUWAHATI- 78100

Advocate for the Petitioner : DR ANKIT TODI

Advocate for the Respondent : SC, TAXES

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 03.04.2024

Heard Dr. B.P. Todi, learned senior counsel, assisted by Mr. D. Dutta, learned counsel for the petitioner. Also heard Mr. V. Choudhury, learned standing counsel for the State GST.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 30.12.2023, passed by the Deputy Commissioner of State Taxes, Barpeta Road-1, Guwahati Zone-B in connection with order passed under Section 73 of the Goods and Services Tax Act, 2017 along with attachment to DRC 07, dated 30.12.2023 for the financial year 2017-18.

3. The grievance of the petitioner is that on receipt of show-cause notice dated 30.09.2023, show-cause reply was uploaded online on 20.12.2023 in form of reply to attachment to determination of taxes for the financial year 2017-18. However, no date for hearing was fixed and the assessing authority, while passing the impugned order had not considered the show-cause reply.

4. The learned standing counsel for the State GST, pursuant to order dated 01.04.2024, has produced a copy of instruction received from the Assessing Officer and it is submitted that although on 20.12.2023, reply was submitted by the petitioner, but no prayer for personal hearing was made and

therefore, the matter was decided by the Assessing Officer. Accordingly, he has opposed the prayer made in the writ petition for interference with the order impugned herein.

5. It is observed from the communication regarding attachment to determination of tax (Annexure-1 to the writ petition) that the concerned officer has not put the petitioner to notice that unless a prayer is made for personal hearing, no personal hearing would be permitted. Therefore, non-granting an opportunity for personal hearing is not found acceptable. Moreover, even if the Assessing Officer had decided not to grant opportunity of personal hearing to the petitioner, yet he has a bounden duty to consider the show-cause reply, which does not appear to have been done in this case.

6. Accordingly, the Court is of the considered opinion that even at the motion stage, this is a fit case for interfering with the impugned order dated 30.12.2023, passed under Section 73 of the Goods and Services Tax Act, 2017 along with attachment to DRC 07, dated 30.12.2023, passed by the Deputy Commissioner of State Tax, Barpeta Road-1, Guwahati Zone-B (respondent no.3). Accordingly, the said order is set aside and the matter is remanded back for a fresh decision by the same authority by fixing a date for giving personal hearing to the petitioner. The date fixed for hearing shall be communicated to the petitioner at the email address agarwal.atul84@gmail.com.

7. As this matter has been disposed of at the motion stage without issuance of notice on the respondents, the respondents are granted liberty to apply for modification of the order, if so advised.

8. The petitioner shall produce a certified copy of this order before the

respondent authorities.

9. Instruction produced by the learned standing counsel for the State GST is retained on record.

JUDGE

Comparing Assistant