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WPA 4071 of 2021

Kumarjit Das
Vs
Superintendent, CGST & CX R-I, BBD Bag Division, Kolkata North Commissionerate & Ors.

Ms. Sweta Mukherjee
... For the Petitioner.
Mr. Somnath Ganguly,
Ms. Aishwarya Rajarhree,
Ms Sabnam Basu,
Ms. Priyamvada Singh
... For the Respondents.

Affidavit-of-service filed in court today be kept with the record.

Heard learned Advocates appearing for the parties.

In this writ petition, the petitioner has challenged the impugned show-cause-cum demand notice dated 30th December, 2020 issued by the Assistant Commissioner CGST and Central Excise concerned.

Learned Advocate appearing for the petitioner submits that on earlier occasion also similar notices were issued and the petitioner has already given reply to that and those were not considered and again the impugned show-cause-notice has been issued. Learned Advocate appearing for the petitioner also submits that impugned show-cause-cum demand notice is not tenable in the eye of law since the demand in question, which the respondents want to raise is not maintainable under the relevant provision of law and the petitioner is exempted from payment of such type of demand.

The petitioner in support of his case wants to rely on an unreported decision of the Hon'ble Orissa High Court, dated 22nd April, 2021 in WP(C) No.27727 of 2020 (Devi Prasad Tripathy vs. The Principal Commissioner CGST and Central Excise, Bhubaneswar and Ors) and another unreported decision of the Hon'ble Bombay High Court dated 12th January, 2021 in Writ Petition (L) No.646 of 2021(Sanjiv Madhusudan Shah vs. Assistant Commissioner of Central and Service Tax and Ors.)

Without going into the legality and validity of the impugned notice, I am of the view that the petitioner should raise those points before the respondent authority concerned and also take all the points which have been raised in this writ petition by way of a representation which is to be filed by the petitioner within one week from date.

The respondent concerned is directed to consider and dispose of the same within four weeks from the date of making such representation by the petitioner in accordance with law and after giving an opportunity of hearing to the petitioner or his authorised representative by passing a reasoned and speaking order and communicate the same to the petitioner within one week thereafter and while considering the representation of the petitioner, the respondent concerned shall take into consideration whether the aforesaid two unreported decisions of the Hon'ble High Courts are applicable to the petitioner or not upon which the petitioner wants to rely.

With these observations and directions, this writ petition, being WPA 4071 of 2021 is disposed of.

(Md. Nizamuddin, J.)