

24-11-2021

Item No.30
Subrata

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
Appellate Side

WPA No.17761 of 2021

Shri Utpal Kumar Gain

-vs-

State of West Bengal & Ors.

Mr. Arijit Chakaborti
Mr. Nilotpal Chowdhury
Mr. Prabir Bera

...for the petitioner

Mr. A. Ray
Mr. T.M. Siddiqui
Mr. D. Ghosh

...for the State

Heard learned advocates for the parties.

In this writ petition, the petitioner has challenged the impugned order of adjudication dated August 13, 2021 passed under section 74(9) of the West Bengal Goods & Services Tax Act, 2017 read with rule 142 (5) of the West Bengal Goods & Services Rules, 2017 on the grounds of jurisdiction and violation of principle of natural justice.

It is a matter of record that the petitioner has participated in the proceeding pursuant to the impugned second show-cause notice and allowed it to be culminated into the final adjudication order dated 13th August 2021. Petitioner contends that there was an earlier notice also on the same subject and the same issue, there could not be any reason of grievance of the petitioner now since no action has been taken by the respondent-authorities on the first show-cause notice and it was not given any effect; and so far as the second show-cause notice is concerned, the petitioner has not approached this court at the notice stage challenging the legality and validity of the show-cause

notice and has participated in the impugned proceeding in which impugned final adjudication order has been passed which is appealable under the statute.

In support of his contention, learned advocate for the petitioner relies upon a decision in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, reported in (1998) 8 SCC 1.

I am of the considered view that since it is not a case where the authority passed the order is without jurisdiction or no opportunity of hearing was given to the petitioner, so it cannot be said that there was violation of principle of natural justice and further issue of constitutional validity of any provision is also not involved in this case. As such, the Whirlpool case (supra) is not applicable in the instant case.

I am also of the opinion that there is no bar in taking aforesaid grounds before the appellate authority or that there is any bar on the appellate authority to adjudicate the grounds against the impugned final adjudication order which petitioner is taking in the instant writ petition.

I am not inclined to entertain this writ petition in the facts and circumstances of the case.

This writ petition being WPA No.17761 of 2021 is hereby dismissed. There shall be no order as to costs.

Certified website copy of this order, if applied for, shall be given to the parties.

[Md. Nizamuddin, J]

