

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice T.S.Sivagnanam
And
The Hon'ble Justice Bivas Pattanayak

M.A.T. 651 of 2022
with
IA no. CAN 1 of 2022

Santosh Kumar Gupta
Vs.
The Assistant Commissioner of Revenue,
Howrah Zone & Ors.

For the Appellant

Ms. Rita Mukherjee
Mr. Abhijat Das

For the Respondents

Mr. Anirban Ray, GP
Mr. T.M.Siddiqui
Mr. D.Ghosh
Mr. N.Chatterjee

Heard on : 05.07.2022.

Judgment on : 05.07.2022.

T.S.Sivagnanam:

This intra Court appeal by the appellant is directed against the order dated 14.03.2022 in W.P.A. 3320 of 2022.

Learned advocate appearing for the appellant sought leave of this Court to delete ground XIV in pages 6 and 7 of the Memorandum of Appeal.

Leave is granted. Accordingly, ground XIV stands struck off from the Memorandum of Appeal.

The appellant filed the writ petition challenging the show cause notice dated December 21, 2021 and the consequential order of adjudication dated January 27, 2022. The ground of challenge is that the show cause notice was only an extract of the show cause notice uploaded in the website and the same was the case with regard to the adjudication order. The appellant further contended that there has been serious violation of principles of natural justice inasmuch as the appellant was not granted adequate opportunity of putting forth their submissions as the full text of the show cause notice was not given.

When the writ petition was heard, the learned Single Bench appears to have issued direction to the learned Government Pleader to produce the original file and, thereafter, the full text of the order is sought to have been served upon the learned advocate appearing for the appellant during the course of hearing. Thereafter, the learned

Single Bench opined that the appellant should avail alternate remedy available under the relevant statute and the writ petition came to be dismissed. Aggrieved by such order, the appellant is before us.

After we have elaborately heard learned advocates for the parties, we find that the case of the appellant stands substantiated. The appellant has been served with the summary of show cause notice and not the full text of the show cause notice. On receipt of the summary of the show cause notice, the appellant sent a representation dated 7th January, 2022 in which he had pointed out that the summary alone has been received and that he had simultaneously denied the allegation as contained in the summary of the show cause notice.

Further, the appellant contended that though the summary of the show cause notice states that the detail notice is enclosed as attachment, the appellant has not received any such attachment.

The appellant also prayed for an opportunity of hearing before any adverse order has been passed. The appellant also states certain other information upon the merits of the matter. In page 76 of the stay application, we find the order passed by the adjudicating authority, which in the opinion of the learned Writ Court was the full text of the order. On going through the said order, we find it is the order

especially containing the serial number and date which is mentioned as 10th December 2021. However, the adjudication order is said to be dated 27th January 2022. The order states that due to technical problem in the system, the order was unable to be uploaded while issuing the order dated 27th January 2022.

Thus, we find that at both stages, the appellant had not been granted adequate opportunity to put forth the submission.

Though there may be adequate glitches in uploading the order or furnishing the copies of the full text of the notice, yet the department should ensure that an opportunity granted to the assessee is not reduced to mere formality and the opportunity should be an effective opportunity so that the principles of fairness is complied with.

As we are satisfied that the principles of natural justice had been violated even at the stage of commencement of the proceeding, we are inclined to interfere with the order of the learned Single Bench.

The appeal is accordingly **allowed**. The order in the writ petition is set aside. Consequently, the orders dated 10th December 2021 and 27th January 2022 are set aside and the matter is remanded to the appropriate respondent with a direction to issue fresh show cause notice containing full text of the allegation against the appellant

and the appellant be granted reasonable time to submit his reply to the show cause notice after providing an opportunity of personal physical or virtual hearing and fresh orders be passed on merit and in accordance with law.

Since, we remand back the matter on the ground of principles of natural justice, the appellant is precluded from raising the issue of limitation before the concerned authority.

Consequently, the connected application stands disposed of.

(T.S.Sivagnanam, J.)

(Bivas Pattanayak, J.)