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**WPA 17451 of 2021**

M/s. Saumya Agrotech Private Limited
Vs
Union of India & Ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Mr. Kaustav Bhattacharya
... For the Petitioner.
Mr. K.K. Maiti,
Mr. Tapan Bhanja
... For the Respondents.

Affidavit-in-opposition and the affidavit-in-reply filed in court be kept with the record.

Heard learned Advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned show-cause-cum demand notice dated 11th October, 2021 issued by the CGST, Kolkata, Audit-I/Respondent No.2 concerned on the ground that the same was issued without granting or considering the prayer for adjournment to the hearing fixed by the respondent concerned on its notice of pre-show-cause notice consultation as per Circular No.1076/02/2020 CX dated 19th November, 2020 issued by the Central Board of Indirect Taxes and Customs relating to high pitch assessment involving demand above Rs.50 lakhs and admittedly, in this case the demand involved is above Rs.50 lakhs.

Petitioner submits that the respondent concerned had issued pre-show-cause-notice consultation by order dated 5th October, 2021 at 5-27 p.m. asking the petitioner to appear on 7th October, 2021 at 2-00 p.m. for hearing in connection with the said pre-show-cause-notice consultation and to which petitioner asked for time on the very same day through e-mail dated 5th October, 2021 at 5-51 p.m. as appears at page 77 of the writ petition requesting the authority concerned to grant adjournment and praying for some time in view of its inability due to puja vacation and without considering the said prayer for granting time and without passing any formal order on the aforesaid pre-show-cause-notice consultation dated 5th October, 2021 and without taking into consideration the aforesaid Circular of the Board dated 19th November, 2020, particularly paragraph 4 of the said Circular, the authority concerned even without intimating the petitioner about fate of its prayer for granting time to attend hearing and any order if at all passed on the said pre-show-cause notice consultation, issued the impugned show-cause-cum demand notice dated 11th October, 2021, which according to the petitioner amounts to depriving the petitioner its right to get the benefit of the aforesaid Circular dated 19th November, 2020 as well as is in failure on the part of the authority concerned to consider the aforesaid Circular dated 19th November, 2020 which was obligatory and binding upon him being a subordinate authority of the Board and further there was a violation of principle of natural justice by way of denial of opportunity of hearing on the pre-show-cause-notice consultation. According to me paragraph 4 of the aforesaid Circular of the Board dated 19th November, 2020 is relevant which is quoted hereinbelow:

> "Due to the above chance in monetary limits of adjudication and to lend clarity on this issue, it is hereby clarified that "Pre show cause notice consultation with assessee, prior to issuance of SCN in case of demands of duty is above Rupees 50 Lakhs(except for preventive/offence related SCN's) , is mandatory and shall be done by the Show-Cause Notice issuing authority".

Learned Advocate appearing for the respondents authority could not satisfy this Court as to whether in response to the prayer of the petitioner for granting time to attend hearing in connection with the pre-show-cause-notice consultation any order was passed either rejecting or allowing the petitioner's such prayer and also as to whether any decision if at all was taken on the date of hearing on 7th October, 2021 or before issuing impugned show cause cum demand dated 11th October, 2021 and whether any intimation was given to the petitioner in this regard.

Learned Advocate appearing for the respondents also submits that the petitioner is not entitled to take the benefit of the aforesaid Circular dated 19th

November, 2020 since another subsequent Circular No.1079/05/2021-6 dated 11th November, 2021 has been issued by the Board and paragraph 5 of which says that pre-show-cause-notice consultation is not mandatory but he could not satisfy this Court about the fact as to whether the said Circular is retrospective in nature and it is well settled principle of law that any Circular, Statute or Notification the benefit which a person was enjoying cannot be taken away retrospectively unless it is expressly mentioned in such Circular, Notification or Statute and in this case respondents could not show from the said Circular dated 11th November, 2021 that it is retrospective in nature. He submits that even the issue of pre-show-cause-notice consultation can also be considered in reply to the impugned show-cause-notice.

Considering the submission of the parties this writ petition, being WPA 17451 of 2021 is disposed of by setting aside the impugned show-cause--cum demand notice dated 11th October, 2021 and the respondents concerned are directed to issue a fresh notice of hearing for pre-show-cause-notice consultation within ten days from date and to take a decision on the same in accordance with law and in case of failure of the petitioner to attend the hearing on the date so fixed by the respondents concerned, the respondents concerned shall be entitled to pass ex parte order and to take any further action in accordance with law.

It is clarified that this Court has not gone into the merits of the impugned show-cause-cum-demand notice dated 11th November, 2021 and the impugned show-cause-cum-demand notice is set aside only on the ground of violation of principle of natural justice and violation of the paragraph 4 of the aforesaid Circular of the Board dated 19th November, 2020 in dealing with pre-show-cause- consultation notice dated 5th October, 2021.

**( Md. Nizamuddin, J. )**