

Form No. J.(2)
Item Nos.2 to 4

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 11.05.2023

DELIVERED ON: 11.05.2023

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 548 of 2023
With
I.A. No. CAN 1 of 2023

Subodh Kumar Mondal
Vs.
State of West Bengal & Ors.

With

MAT 549 of 2023
With
I.A. No. CAN 1 of 2023

Subodh Kumar Mondal
Vs.
State of West Bengal & Ors.

With

MAT 551 of 2023
With
I.A. No. CAN 1 of 2023

Subodh Kumar Mondal
Vs.
State of West Bengal & Ors.

Appearance:-

Mr. Anil Kumar Dugar
Mr. Gobinda Dey
Mr. Rajarshi Chatterjee

.....For the Appellant

Mr. Anirban Ray, Ld. G.P.
Mr. T. M. Siddique
Mr. Debashis Ghosh
Mr. Nilotpal Chatterjee
Mr. V. Kothari
Mr. D. Sahu

.....For the respondents/State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. Since the issues involved in these appeals are common, all these appeals are taken up for hearing analogously and are being disposed of by this common judgement and order.

2. These appeals have been filed against the orders passed by the learned Single Bench declining to grant any interim order and directing the respondents to file their affidavits in opposition within a time frame with liberty to the appellant to file replies thereto. The orders impugned in the writ petitions are orders passed under Section 74(9) of the W.B.G.S.T. Act, 2017 (for brevity, the Act). Admittedly, the said orders are appealable orders. The appellant did not choose to file appeals but approached the learned Writ Court on the ground that opportunity of personal hearing has to be mandatorily granted in terms of Section 75(4) of the Act and this

having not been granted, the orders dated 10th November, 2022 and 2nd December, 2022 are liable to be set aside.

3. The fact remains that during the pendency of the writ petitions the entire amount, which was demanded in the three orders passed by the respondents, which were impugned in the writ petitions have been fully recovered, if not more than the amount, which was demanded except penalty and interest.
4. The learned counsel appearing for the respondents/State points out that notice was issued fixing the hearing date on 14th March, 2022, but the appellant failed to appear on the said date and also did not appear on the adjourned date, which was fixed on 25th March, 2022.
5. The learned advocate appearing for the appellant on the other hand would submit that in the show-cause notice dated 28th September, 2022 in the column regarding details of personal hearing, it has been mentioned as “not applicable”. Therefore, it is submitted that the mandatory statutory requirement of affording an opportunity of personal hearing having not been granted, the orders, which were impugned in the writ petitions, are liable to be set aside.
6. At the request of the learned advocates on either side, the writ petitions are taken up for disposal along with these appeals.

7. Considering the peculiar facts situation in the instant case, namely that by way of a third party garnishee order, the entire tax demanded from the appellant have been recovered, we are of the view that the revenue will not be prejudiced if a fresh opportunity of personal hearing is granted to the appellant to put forth his submissions.
8. The submission of the learned advocate appearing for the respondents/State is that the interest of the revenue should be protected. In our view, the interest of the revenue has been sufficiently protected inasmuch as the entire tax demanded under the three impugned orders have been fully recovered by way of garnishee proceedings.
9. In the light of the above, the writ petitions as well as these appeals are disposed of by directing the appellant to treat the orders under Section 74(9) of the W.B.G.S.T. Act, 2017, which were impugned in the writ petitions as the show-cause notice and the appellant is directed to file his objections to the notice within 15 days from the date of receipt of server copy of this judgement and order. On receipt of the objections/replies, the Deputy Commissioner, State Tax, Bardhaman Charge shall afford an opportunity of personal hearing to the appellant or his authorised representative and pass fresh orders on merits and in accordance in law. The amount, which have already been recovered by way of garnishee proceedings shall abide by the fresh orders to be passed in terms of the above directions.

10. In the light of the fact that the entire tax demanded in the three orders has been recovered, the respondent authorities are directed to de-freeze the bank account of the appellant.
11. There shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree,

(HIRANMAY BHATTACHARYYA, J.)

Pallab/K.S. AR(Ct.)