14.12.2023
Sl no. 24
Ct no. 2
P.M.

WPA 27291 OF 2023

Arup Mallick.
- **Vs** -
Commissioner, Commercial Taxes & Anr.

Mr. Debasish Ghosh,
Mr. Partha Sen
... for the petitioner
Mr. Anirban Ray, Ld. Govt. Pleader
Md. T. M. Siddiquui,
Mr. T. Chakraborty,
Mr. S. Sanyal
... for the State.

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned adjudication order dated 27th July, 2022, under Section 74(9) of the WBGST Act, 2017.

Petitioner challenges the aforesaid impugned order by contending that the same is in contravention of Section 75(4) of the WBGST Act which mandates adjudicating authority to afford opportunity of personal hearing if adverse order is passed against an assessee and admittedly the impugned order is an adverse order.

Petitioner submits that in the impugned order the documents which have been filed were also not taken into consideration by the adjudicating authority though the same were filed before passing of the impugned order.

Mr. Ghosh, learned advocate representing the petitioner in support of his contention in addition to the aforesaid provisions of law, he also relies on an unreported decision dated 5th December, 2023 passed by the Hon'ble Madhya Pradesh High Court in the case of M/s. Technosys Security System Private Limited – Vs. – Commissioner, Commercial Taxes Moti Bungalow Compound, M.G. Road & Ors in Writ petition No. 13618 of 2023.

Mr. Siddiqui, learned Additional Government Pleader in opposing this writ petition submits that though Section 75(4) of the Act requires affording of opportunity of personal hearing to an assessee in case of adverse order but in the facts and circumstances of this case that petitioner has filed this writ petition after more than one year five months this writ petition should not be entertained and further he relies on an unreported decision of this Court dated 21st December, 2021 in the case of Ram Prasad Ganga Prasad & Ors. – Vs. – Assistant Commissioner, State Tax, Beadon street Charge & Ors. in WPA 20136 of 2021 where this Court has taken a view that if an assessee does not specifically asked for personal hearing in that event passing of the order without giving an opportunity of personal hearing is legal and valid. He further submits that the aforesaid view was upheld by the Hon'ble Division Bench.

So far as the ground of delay in approaching this writ Court, in support of his contention Mr. Ghosh has annexed several medical documents to show that delay in approaching this Writ Court was based on valid and bonafide ground and that the delay is beyond the control of the petitioner.

Considering the facts and circumstances of this case and submission of the parties as appears from record and in the interest of justice and that in this case not only the order was passed without giving opportunity of personal hearing, but the same was also passed by not taking into consideration the documents which have been filed by the petitioner which are matter of records, which were filed before passing the impugned order, this writ petition being WPA 27291 of 2023 is disposed of by setting aside the aforesaid impugned order date 27th July, 2022 and the matter is remanded back to the adjudicating authority concerned to pass a fresh speaking order in accordance with law after giving opportunity of hearing to the petitioner or its authorised representatives, within eight weeks from the date of communication of this order.

This order has been passed in view of the exceptional circumstances as has been recorded hereinabove.

(Md. Nizamuddin, J.)