

SI No.25
03.03.2023.
SB-II

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**WPA 485 of 2023
Debabrata Das**

-versus

**Additional Commissioner, Central Goods &
Service Tax and Central Excise (CGST & CE), Siliguri
Commissionerate & Ors.**

Mr. Jagriti Mishra
Mr. Subrata Pal
Mr. Unus Ali
Mr. Subham Gupta
Mr. Debayan Goswami
Ms. Ananya Bhattacharya
... for the petitioner.

Mr. Ratan Banik
Mr. Shankar Sarkar
... for the respondents.

Ms. Bedashruti Bose
... for the State.

The petitioner is aggrieved by the Order-in-Original dated September 14, 2021 passed by the Additional Commissioner, Central Goods & Services Tax and Central Excise, Siliguri Commissionerate.

The petitioner submits that the said order was passed without giving any reasonable opportunity of hearing to the petitioner.

The proceeding arises from the show cause-cum-demand notice dated October 1, 2020 issued under Section 73 of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017. The disputed period is 2015-16.

The petitioner was asked to show cause within thirty days from the receipt of the notice as to why

action would not be taken against him under the provisions of the aforesaid Acts.

The petitioner submits that as the Corona Pandemic was at its peak at that point of time, it was absolutely impossible for the petitioner to collect all documents and submit the reply to the show cause within the time as specified in the show cause-cum-demand notice.

The reply to show cause was filed on August 26, 2021. After the show cause was filed the petitioner was requested to appear in the personal hearing. The petitioner submits that the said opportunity could not be availed of because he was suffering from several co-morbidities and did not take the risk of moving out during the pandemic period. Notices for personal hearing were issued in April 2021, May 2021 and July 2021.

It has been submitted that on each and every occasion the petitioner replied to the notices and requested adjournment on account of non-availability of necessary details from his accountant. The Order-in-Original was passed on September 14, 2021.

After the expiry of the period for preferring appeal, the petitioner filed the writ petition before this Court on February 23, 2023 seeking relief.

The primary contention of the petitioner is that the impugned order is an ex parte one. As he was not in a position to avail the opportunity of hearing granted to him, the matter may be remanded back to the authority for reconsideration on merits.

In support of the aforesaid submission, reliance has been placed on an unreported order dated May 11, 2020 passed by the Hon'ble Division Bench of the Andhra Pradesh High Court in WP Nos. 8425 and 8451 of 2020.

The Hon'ble Division Bench of the Andhra Pradesh High Court remanded back the matter to the authority for reconsideration on the ground that on account of the prevailing pandemic situation, the petitioner was not able to file detailed reply and could not appear in person before the respondent. The Court was of the opinion that there was a failure of the rules of natural justice which entail a 'fair' hearing.

Prayer has been for remanding the matter back to the authority for reconsideration.

The submission and the prayer of the petitioner has been opposed by the learned advocate representing the respondents.

It has been submitted that the initial show cause-cum-demand notice was replied by the petitioner long after the time mentioned in the said notice.

It has been pointed out that repeated opportunities were given to the petitioner for production of documents. Upon consideration of the submission of the petitioner, arrangement was made for personal hearing on virtual mode. As many as six opportunities were given for hearing on virtual mode but the petitioner neither turned up in person nor in the virtual mode.

It has been submitted that it has been clearly mentioned in the Order-in-Original that any person deeming himself to be aggrieved by the order may appeal within three months from the date of its communication. The order was passed on September 14, 2021 but the petitioner did not prefer any appeal between the time mentioned in the said order. Neither did the petitioner file appeal within the time prescribed in Section 107 of the Goods and Services Tax Act.

It has been contended that at such belated point of time, the matter ought not to be remanded to the authority for reconsideration.

I have heard the submissions made on behalf of both the parties.

The initial show cause-cum-demand notice which was issued on October 1, 2020 ought to have been replied within the time specified in the said notice or immediately thereafter. The petitioner filed a reply to the show cause notice nearly ten months after the same was issued. Even at the adjudication stage, repeated opportunities were granted to the petitioner for production of necessary documents. The petitioner all along sought adjournments but never produced the necessary document before the authority either in person or in the virtual mode.

It does not appear that there was any bona fide intention on the part of the petitioner to produce the documents as sought for. The petitioner went on buying time by submitting repeated requests for adjournment. The Order-in-Original was passed on September 14, 2021. Even thereafter the petitioner chose not to file the appeal within the prescribed period.

After the order attained finality, the present writ petition has been filed in the end of February 2023 by submitting that as there is no other remedy left to the petitioner to challenge the Order-in-Original. Accordingly, the writ court may come to the rescue of the petitioner and pass order for remand of the matter for reconsideration.

The order relied upon by the petitioner passed by the Hon'ble Andhra Pradesh High Court was passed in the month of May 2020 when partial lock down was imposed throughout the entire country and there was genuine difficulty in free movement of individuals.

Under such circumstances the Andhra Pradesh High Court directed the matter to be considered afresh as the petitioner therein was not able to avail the opportunity of fair hearing. Such is not the case at hand. The Corona Pandemic substantially ebbed in the year 2021 and as opportunity was given for virtual hearing, the petitioner ought to have availed the same.

The conduct of the petitioner does not appear to be a bona fide one. At such a belated point of time, the Court is of the opinion that, the matter is not required to be remanded back to the authority for reconsideration.

In view of the above, the writ petition fails and is hereby dismissed.

Affidavit-of-service filed in Court today is taken on record.

Urgent certified photo copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

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(Amrita Sinha, J.)