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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

W.P.A. 1212 of 2023
Tashi Bhutia
Vs.
Deputy Commissioner State Tax, Bureau of Investigation of Others

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal
... For the Petitioner
Mr. Bikramaditya Ghosh
... For the State
Mr. Ratan Banik
Mr. Biswaraj Agarwal
... For the Respondent Nos. 3 & 5

Affidavit of service filed on behalf of the petitioner is taken on record.

It is contended on behalf of the petitioner that the petitioner is carrying on proprietorship business under the name and style of M/s. Tashi Bhutia and was granted contract for construction of road from Poobong Fatak to Rambi, lengh 15 Kms under RIDF-XV upon acceptance of his bid vide letter issued on 29th July, 2010. Upon completion of work, completion certificate was issued in his favour in December, 2012. Statement of payment was issued in favour of the petitioner by the Executive Engineer, Central Planning Quality Control and Procurement, Darjeeling on 27th March, 2023 with regard to vouchers dated 27th August, 2019 and 18th March, 2020 respectively. A show cause notice was issued to the petitioner on 23rd June, 2021 alleging that the petitioner suppressed the turn over of supply worth Rs. 1,74,88,287/- in 2019-2020 resulting in evasion of tax worth Rs.31,47,890/- along with interest and penalty amounting to total of Rs.75,50,746.80/-. The petitioner being a patient of carcinoma was unable to reply to the show cause notice due to health condition. The petitioner was directed to make payment of the entire amount by 19th November, 2021 before the authority.

It is submitted on behalf of the petitioner that the contract of the petitioner is governed by the Value Added Tax Act and not by Central Goods and Service Tax Act and West Bengal Goods and Service Tax Act. Since the petitioner was unable to submit a reply to the show cause issued by the authority, he seeks an opportunity to place his case before the authority before any penalty is slapped on him.

Learned counsel for the respondents refers to a circular issued by the Finance Department, Audit Branch, Government of West Bengal on 16th August, 2017 and submits that the contract of the petitioner is governed by Central Goods and Service Tax Act and West Bengal Goods and Service Tax Act and not the Value Added Tax Act.

Upon consideration of the submission made on behalf of the parties, this Court is inclined to hold that since the petitioner had no opportunity to appear before the authority to substantiate his case or file a reply to the show cause notice issued by the authority due to his precarious medical condition, justice demands that the petitioner be given an opportunity of hearing by the authority before any liability is slapped upon him.

In view of the above, the order impugned passed on 24th August, 2021 is set aside.

The concerned authority, being the first respondent herein, is directed to revisit the issue upon affording reasonable opportunity of hearing to the petitioner and pass a reasoned order thereto within six weeks from the date of communication of this order, in accordance with law.

The petitioner is at liberty to submit all relevant documents before the authority in support of his case at the time of hearing.

It is made clear that this Court has not gone into the merits of the case and the concerned authority shall be at liberty to deal with the case independently and without being influenced by any observation which may have been made in this order.

The writ petition is thus disposed of.

There shall be, however, no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J)