

20.02.2024
Item No.45
gd/ssd

MAT/276/2024
IA NO: CAN/1/2024
SAPTARSHI AND ANR.
VS
THE DEPUTY COMMISSIONER OF
STATE TAX AND ORS.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah
..for the Appellants.

Md. T.M. Siddiqui,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
..for the State.

1. This intra court appeal is directed against the order dated 1st February, 2024 in WPA 1493 of 2024.

2. In the said writ petition the appellants had challenged the order passed by the adjudicating authority, namely, the Deputy Commissioner of Revenue, Bureau of Investigation, South Bengal Headquarters dated 28th December, 2023.

3. Though several grounds have been raised challenging the said order, the principal ground is by contending that the order passed by the Additional Chief Secretary, Finance Department dated 18th December, 2023 has not been considered and the effect of the order has not been taken note of.

4. As could be seen from the adjudication order, the personal hearing was afforded on 17.12.2023 i.e. one day prior to the order passed by the Additional Chief Secretary, Finance Department.

5. However, it is the submission of the learned counsel for the appellants that the draft order was made available and placed before the adjudicating authority.

6. Even assuming the same to be right, the authority cannot act on a draft order as the authority has to be informed by the superior officer about the decision taken for which a signed order is required to be communicated. Furthermore, we find that the draft order said to have been placed before the authority has not been averted.

7. Thus, considering the peculiar facts and circumstances of the case, we are of the view that the matter can be remanded back to the Deputy Commissioner of Revenue for a fresh decision. Since apart from the period in question, there are two other show cause notices which have been issued for the subsequent period.

8. For the above reason, the appeal is allowed and the order passed by the Deputy Commissioner of Revenue, Bureau of Investigation, South Bengal Headquarters dated 28th December, 2023 is set aside and the matter is remanded back to the said authority

who shall adjudicate the case afresh along with two other show cause notices which are pending adjudication and specifically taken into consideration the effect and the purport of the reasoned order passed by the Additional Chief Secretary, Finance Department dated 18th December, 2023, afford an opportunity of personal hearing to the authorized representative of the appellant and the other interested persons and take a fresh decision in the matter on merits and in accordance with law.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)