

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 3788 of 2024

**Anurag Garodia, Proprietor of International
Business Organisation**

v.

The Assistant Commissioner of State Tax & Ors

For the petitioner : Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah

For the State : Mr. Anirban Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Ms. Saptak Sanyal

Heard on : 28th February, 2024

Judgment on : **28th February, 2024**

Raja Basu Chowdhury, J:

1. Considering the nature of urgency involved, the present writ petition is taken up for consideration.
2. The present writ petition has been filed, *inter alia*, challenging the order dated 20th December, 2023, issued under Section 73(9) of

the West Bengal Goods and Services Tax Act, 2017 read with CGST Act, 2017 (hereinafter referred to as the “GST Act”).

3. The petitioner contends that the petitioner was served with a show-cause notice on 22nd September, 2023. By placing reliance on the said notice, it is submitted that although, the petitioner was given an opportunity to submit its response in terms of the provisions contained in Section 73 of the GST Act by 25th October, 2023 yet the date for personal hearing was fixed on 10th October, 2023.
4. According to the petitioner, by reasons of Durga Puja, the petitioner could not appropriately prepare its response and further since, the office of the respondents were closed between 16th October, 2023 and 29th October, 2023, the petitioner had applied for extension immediately on the reopening of the office of the respondent no.1 on 30th October, 2023 by a notice in writing of even date. The same was followed up by a response in the GST portal dated 6th November, 2023 wherein the factum of seeking extension for giving its reply was also recorded. The petitioner further claims that the petitioner had closed down its business and surrendered its GSTIN in the year 2020. As such, it was difficult to give its response within a short time.
5. By drawing attention of this Court to the printout copy of the petitioner’s response/extension application on the GST portal dated 6th November, 2023, it is submitted that the petitioner had

also sought for personal hearing. According to the petitioner, the respondent no.1 by ignoring the petitioner's request had passed the order dated 20th December, 2023 purportedly under Section 73(9) of the GST Act. The aforesaid order, according to the petitioner has been passed contrary to the provisions of the GST Act.

6. By referring to the provisions of GST Act, in particular Section 75(5), it is submitted that the same incorporates the power to grant upto three (3) extensions. The petitioner had only sought for one extension. Although, the proviso to sub-section (5) of Section 75 of the GST Act authorizes the respondent no.1 to grant upto three extensions, in the petitioner's case, the respondent no.1 without formally rejecting the petitioner's application for extension, had passed the order dated 20th December, 2023. According to the petitioner, the aforesaid order cannot be sustained as the same has been passed without giving appropriate opportunity to the petitioner to respond to the show cause. He submits that although, there is an appellate provision, an appeal is no substitute for the order to be passed on consideration of the petitioner's response, which in this case has been denied.
7. Mr. Siddiqui, learned advocate representing the respondents on the other hand, submits that despite the fact that the petitioner was given ample opportunity to respond to the show-cause, the petitioner did not avail of such opportunity. The show-cause

notice was itself issued on 22nd September, 2023 and as such on the petitioner's own showing the petitioner had time at least till 15th October, 2023 to give its response, even if the period for Puja Vacation is discounted. In any event, it is submitted that the petitioner was required to give its response on the online portal and, as such, the same had nothing to do with the closure of the office of respondent no.1 on account of Puja Vacation. It is submitted that the petitioner has an alternative remedy in the form of an appeal. The time to prefer the appeal has not yet expired. As such, this Hon'ble Court ought not to entertain the present writ petition.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it is noticed that show-cause under Section 73(1) of the GST Act has been issued. From a perusal of the said notice it would appear that the respondent no.1 had granted liberty to petitioner to file its response on/or before 25th October, 2023, though personal hearing was offered only on 10th October, 2023. The petitioner claims that the petitioner had closed down its business and surrendered its GSTIN in the year 2020. As such, it was difficult to give its response within a short time. The petitioner also claims that immediately after reopening of the office of the respondent no.1 on 30th October, 2023 it had applied in writing and had sought for an extension to file its response. The same was

subsequently followed up by its response/extension application dated 6th November, 2023 filed on the GST portal wherein the petitioner had also sought for personal hearing in writing. In this context I may note that the provisions of Section 75(5) of the GST Act, *inter alia*, provides as follows:-

“75.(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.”

9. Having regard to the aforesaid, I am of the view that once, the petitioner had sought for an extension, the respondent no.1 was obliged to consider the application for extension and ought not to have passed the final order without appropriately considering the petitioner's application for extension. The final order was also not passed immediately. The same was passed on 20th December, 2023, which is more than a month from the date the petitioner had sought for extension. Although, the discretion to grant an adjournment vests in the authority, in my view such discretion must be exercised judiciously. The manner in which the respondent no.1 has proceeded to pass the final order without granting extension to the petitioner either to file its response or to be offered personal hearing, despite the petitioner showing

sufficient cause, appears to be a colorable exercise of power by the said authority.

10. Although it has been argued by the respondents that the petitioner has an alternative remedy in the form of an appeal, I am of the view that an appeal is no substitute to revisit of an *ex parte* order, especially when the defense of the petitioner is not on record. Further since, the order stands vitiated on the ground of violation of the principles of natural justice, alternative remedy in the form of an appeal is no bar for exercise of extraordinary writ jurisdiction.
11. Having regard to the aforesaid, since the impugned order cannot be sustained, the same is set aside.
12. The petitioner is directed to file its response before the respondent no.1 on/or before 15th of March, 2024.
13. The respondent no.1 is also directed to communicate to the petitioner the date of personal hearing immediately after 15th March, 2024.
14. If the petitioner does not file any response, the respondent no.1 shall be entitled to proceed in the matter and pass appropriate orders as it may deem fit and proper.
15. With aforesaid observations/directions, the writ petition stands **disposed of**. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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