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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9256 of 2024

M/s Techno Scientific Company & Anr.
Versus
The State of West Bengal & Ors.

Mr. Nilotpal Chowdhury
Mr. Prabi Bera
Mr. Dipak Sharma
... For the petitioners.

Mr. Anirban Ray
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
.. For the State.

1. The present writ petition has been filed, *inter alia*, Challenging the order dated 29th December, 2023, passed under Section 73 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

2. Mr. Chowdhury, learned advocate appearing in support of the petition by drawing attention of this Court to the summary of the show-cause notice, appearing at page 118 of the writ petition, submits that although, a notice in Form GST DRC 01 had been issued in respect of the tax period July, 2017 to March, 2018, for the financial years 2017, 2018, however, such notice did not contemplate any opportunity of hearing as the column for the date of personal hearing, time of the personal hearing and the venue of personal hearing to be held, has been

filled up with the abbreviation 'N.A.'.

3. According to Mr. Chowdhury, before determination of tax paid or short-paid and input tax wrongly availed or utilized by a person, the authorities are obliged not only to serve a show cause notice but are also obliged in terms of Section 75(4) of the said Act, to afford an opportunity of hearing. He submits although, the petitioners had not applied in writing for opportunity of hearing, yet the same does not absolve the authorities from affording an opportunity of hearing to the petitioners. In support of his aforesaid contention he has placed reliance on the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Goutam Bhowmik v. State of West Bengal & Ors.***, reported in **(2024) SCC online Cal. 372**. According to him, since in this case, no opportunity of hearing was provided to the petitioners, the petitioners could not appropriately place its case before the respondents, which resulted not only of violation of principles of natural justice but also miscarriage of justice. According to him, the aforesaid order cannot be sustained and should be set aside on such ground alone.

4. It is still further submitted that the provision of appeal as provided for in Section 107 of the said Act is no bar since, the parent order stands vitiated by reasons of failure of principles of natural justice.

5. Mr. Siddiqui, learned advocate representing the respondents opposes the petition.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case, it is noted that proceeding under Section 73 of the said Act had been initiated on the basis of the show cause notice dated 31st August, 2023, appearing at pages 118 and 119 of the writ petition.

7. It would appear that although, the said notice provides for details to be provided in connection with personal hearing inter alia, including the date, time and venue, apart from the date for providing reply no other particulars had been provided. Insofar as the column provided for the date, time and venue of personal hearing is concerned the same is filled up with the abbreviation 'N.A.'. Admittedly, in this case, no personal hearing had been afforded to the petitioners. It is well-settled that before taking a decision under Section 73 of the said Act, the proper officer is obliged in terms of Section 75(4) of the said Act to afford opportunity of hearing whether or not any request in writing has been received from the person. Such fact would corroborate from a plain reading of Section 75(4) of the said Act, wherein it has been provided that an opportunity of hearing shall be granted where either a request is received in writing from the person

chargeable with tax and penalty or where any adverse decision is contemplated against such person. Although in this case, the petitioners did not make any request in writing, however, since, an adverse decision was contemplated against the petitioners, the proper officer was obliged to afford an opportunity of hearing to the petitioners before passing the final order. The same finds support from the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Goutam Bhowmik*** (supra).

8. Having regard to the aforesaid, I am of the view that the order passed by the proper officer under Section 73 of the said Act dated 29th December, 2023, cannot be sustained and the same is accordingly set aside.

9. Before parting, I may note that although, the petitioners have an alternative remedy in the form of an appeal under Section 107 of the said Act, having regard to failure to afford an opportunity of hearing to the petitioners, such alternative remedy is no bar for this Court to exercise jurisdiction since, an appeal is no substitute to revisit of an order passed without complying the principles of natural justice.

10. Since, the order dated 29th December, 2023 has been set aside, I direct the proper officer to dispose of the proceeding initiated under Section 73 of the said Act by

affording the petitioners an opportunity of hearing. The entire proceeding under Section 73 of the said Act, should be disposed of by the proper officer not later than six weeks from the date of communication of this order on the basis of the observation made herein.

11. Since no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed not to have been admitted by the respondents.

12. With the above observations and directions, the writ petition stands disposed of.

13. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)