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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9391 of 2024

Amex Services & Anr.
-vs-
Deputy Commissioner, State Tax, Assansol Charge & Ors.
& Ors.

Mr. Sumit Ghosh
...For the petitioners

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

1. By way of the present writ petition the petitioners have challenged the order dated 29th December 2023 issued under Section 73(9) of the WBGST & CGST Act 2017 (hereinafter referred to as the "said Act") for the period 1st July 2017 till 31st March 2018. According to the petitioners, they are engaged in the business of providing goods transport agency services and were duly registered under the said Act. The returns filed by the petitioners were scrutinized by the proper officer in terms of Section 61 of the said Act. Unfortunately, the proper officer did not inform the petitioner of the discrepancies by making available the form GST ASMT-10 for the petitioners to take steps.

2. The petitioners contend that when the intimation of liability was given to the petitioners by issuance of a notice dated 26th September 2023 or when the show cause notice dated 29th September 2023 was issued, the petitioners were not favoured with form GST ASMT-10,

for the petitioners to be made aware with regard to the discrepancies.

3. Mr. Ghosh, learned advocate appearing for the petitioners by drawing attention of this Court to the show cause notice and by referring to Section 61 of the said Act and Rule 99 of the WBGST Rules, 1999 (hereinafter referred to as the "said Rules") submits that it is the obligation of the proper officer to identify the discrepancies and to notify the petitioners in Form GST ASMT-10. In the present case since, the petitioners had not been notified of the aforesaid discrepancies by issuance of Form GST ASMT – 10, the petitioners could not appropriately respond to the show cause notice and the adjudication order issued under Section 73(9) of the said Act stands vitiated on such ground.

4. Mr. Siddiqui, learned advocate appearing for the State acknowledges the fact that the petitioners have not been served with a copy of the Form GST ASMT – 10.

5. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, including the provisions of Section 61 of the said Act and Rule 99 of the said Rules, I am of the view that it was the obligation of the proper officer before passing any order in terms of Rule 99 of the said Rules read with Section 61 of the said Act, to make available to the petitioner the Form GST ASMT – 10 and to identifying therein, the discrepancies noticed by the proper officer while scrutinizing the returns. Since, the same had not been made available to the

petitioners, the petitioners could not have appropriately respond to the show cause notice. The aforesaid order thus, stands vitiated on the ground of violation of principles of natural justice.

6. Having regard to the aforesaid, I propose to and do hereby keep the order passed under Section 73(9) of the said Act, dated 29th December, 2023, in abeyance and direct the proper officer to make available Form GST ASMT – 10 within two week from date and to provide appropriate opportunity to the petitioners to file additional response to the show cause notice dated 29th September 2023 and thereafter to afford an opportunity of hearing to the petitioners.

7. If the petitioners file response to the show cause or fail to respond to the same upon receipt of a copy of Form GST ASMT – 10 within a period of two weeks from the date of service of such form, the proper officer upon giving an opportunity of hearing to the petitioners in the manner as aforesaid shall consider the same and if on a proper consideration thereof, the proper officer is of the view that the said order can or cannot be sustained, he shall pass a fresh order and dispose of the entire proceedings, preferably within a period of 8 weeks from date.

8. With the above observations and directions, the writ petition being WPA 9391 of 2024 is disposed of.

9. All parties to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)