

07.05.2024
Item No.18
Court No.5
Saswata

W.P.A. 9452 of 2024

**Oliya Steel Private Limited
Versus
The State of West Bengal & anr.**

Mr. R.Chatterjee
Mr. Somnath Balial
Ms. Suman Sahani

...For the petitioner

Mr. Tanoy Chakraborty
Mr. D.Sahu

...For the State

1. The present writ petition has been filed, inter alia, challenging the order dated 7th February 2024 passed under Section 73 of the WBGST Act, 2017¹ on the ground of violation of principles of natural justice.
2. It is contended that the respondents, without offering personal hearing to the petitioner, despite recording the factum of personal hearing being offered in the aforesaid order, had disposed of the said proceeding by passing the order dated 7th February 2024.
3. In this case, it would be relevant to note that a show cause notice dated 17th November 2023 was issued and the summary thereof in GST DRC-01 was uploaded alleging short payment of tax and interest for the period from April 2018 to March 2019 and the discrepancies found upon scrutiny were communicated to the petitioner. Records reveal that initially by a response dated 18th December 2023, the petitioner had requested for additional time and had requested for a date after 8th January 2024. Subsequently, on 22nd January 2024 the petitioner had once again requested for allowing the

petitioner further time to file its response. It appears that on 7th February 2024 an order under Section 73 of the said Act was passed. It would transpire from the said order that although, the proper officer had requested the petitioner to appear with all relevant documents on 2nd February 2024 at 11.30 AM, the petitioner neither replied to the discrepancies nor did he appear before the proper officer. In such circumstances, the proper officer was compelled to pass the ex parte order dated 7th February 2024.

4. Mr. Chatterjee, learned advocate appearing for the petitioner by placing before this Court a screenshot of the common portal which is taken on record, submits that the proper officer, without affording any opportunity of hearing to the petitioner, had incorrectly, in the order dated 7th February 2024 recorded that he had requested the petitioner to appear along all relevant documents on 2nd February 2024. He submits that from the screenshot of the common portal it would be apparent and clear that no opportunity of hearing was ever offered to the petitioner.
5. Mr. Chakraborty, learned advocate appearing for the State respondents on the other hand submits, on the basis of the instruction received him, that the petitioner was directed to appear before the proper officer on 5th February 2024. He has, however, no explanation to offer as to why the common portal, which is the means of communication does not reflect the factum of offering of

¹ Hereinafter referred to as the “said Act”

personal hearing to the petitioner on 2nd February, 2024.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record.
7. In this case, it may be noticed that since, the proper officer was contemplating passing of an adverse decision against the petitioner, as would be apparent from the show cause notice, the authorized officer in my view, under Section 75(4) of the said Act was obliged to afford an opportunity of hearing to the petitioner. From the documents on record it does not appear that any opportunity of hearing was afforded to the petitioner. The instructions received by Mr. Chakraborty as submitted before this Court, with regard to the petitioner being directed to appear before the proper officer on 5th February 2024 is also contrary to the recording made in the order dated 7th February 2024.
8. Having regard to the aforesaid, I am of the view that there has been non-compliance of Section 75(4) of the said Act, insofar as affording opportunity of hearing is concerned. As such the aforesaid order dated 7th February 2024 cannot be sustained and the same is accordingly set aside and quashed.
9. The proper officer is, however, directed to complete the proceeding under Section 73 of the said Act, by giving an opportunity of hearing to the petitioner, within a period of 6 weeks from the date of communication of this order.

10.I, however, make it clear that this Court has not gone into the merits of the show cause notice issued by the proper officer.

11.With the above observations and directions, the writ petition being WPA 9452 of 2024 is accordingly **disposed of.**

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

(Raja Basu Chowdhury, J.)