M/L 80
14.05.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11592 of 2024

Basanta Kumar Shaw
Versus
The Assistant Commissioner of Revenue Commercial Tax & State Tax, Tamluk Charge & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah
… For the petitioners.

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
… For the State

1. The present writ petition has been filed, inter alia, challenging the order dated 4th August, 2023, issued under Section 73 of the Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), in respect of the financial year 2017-18.
2. It is the petitioner's case that although, a show cause notice dated 31st January, 2023 was issued under Section 73(1) of the said Act read with Section 20 of the IGST Act, 2017, the proper officer despite calling upon the petitioner to submit its explanation within 2nd April, 2023 had fixed personal hearing on 20th February, 2023. According to Mr. Kanodia, unless the petitioner files his reply there can be no question of the petitioner explaining the reply in person. The very object of

personal hearing is to elucidate on the response to be given by the petitioner. In the instant case, since the proper officer had directed the petitioner to file his response by 2nd April, 2023, the proper officer ought to have afforded an opportunity of hearing to the petitioner on 2nd April, 2023 or thereafter. By referring to the provisions of Section 75(4) of the said Act, it is submitted that as to whether or not the petitioner had made any representation praying for personal hearing was immaterial, it was obligation on the proper officer to afford the petitioner with an opportunity of hearing. Since, in the present case no such opportunity had been offered to the petitioner prior to passing of the order dated 4th August, 2023, under Section 73 of the said Act, which is impugned, the entire proceeding stands vitiated on account of failure of natural justice. The aforesaid order should be set aside and the matter should be remanded back to the proper officer for adjudication afresh.

3. Mr. Chakraborty, learned advocate enters appearance on behalf of the respondent authorities.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case a show cause notice dated 31st January, 2023 had been issued. As would appear from Rule 142(3) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "said Rules") since, time to make payment of tax and

interest under sub-section (8) of Section 73 is 30 days from the date of service of notice, no order under Section 73(9) of the said Act can be passed before expiry of the period of 30 days. As such ordinarily the assessee is provided with a 30 days window to file its response to the notice under Section 73(1) of the said Act. In this case, it would appear from the show cause notice dated 31st January, 2023, that 30 days window had been provided to the petitioner as the date for filing of the response was fixed on 2nd April, 2023. It is true, that the petitioner did not file its response to the aforesaid show cause nor did the petitioner make any application praying for personal hearing. However, the same did not absolve the proper officer from affording an opportunity of hearing to the petitioner in terms of Section 75(4) of the said Act since, an adverse order was contemplated against the petitioner. From the show cause notice dated 31st January, 2023 it appears that the petitioner was offered opportunity of hearing on 20th February, 2023, which in my view, could not have satisfied the requirements of being afforded with a reasonable opportunity of hearing under the provisions of Section 75(4) of the said Act.

5. Having regard to the aforesaid since, the order dated 4th August, 2023 stands vitiated on the ground of failure of natural justice, I am of the view that the same cannot

be sustained. The aforesaid order is accordingly set aside.

6. The petitioner is remanded back to the proper officer in respect of the show cause notice dated 31st January, 2023, with a further direction upon the proper officer to afford the petitioner an opportunity of hearing and to consider the documents to be produced by the petitioner in course of the hearing and to dispose of the proceeding under Section 73(1) of the said Act, by taking the same to a logical conclusion within a period of four weeks from the date of communication of this order.
7. With the above observations and directions, the writ petition is disposed of without any order as to costs.
8. It is made clear that this Court has not gone into the merits of the show cause and it would be open to the proper officer to adjudicate the show cause on the basis of the materials available before him without being influenced by any observation made hereinabove.
9. Since no affidavit-in-opposition has been called for, the allegation contained in the writ petition are deemed not to have been admitted by the respondents.
10. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)