Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

W.P.A 11892 of 2024

Messers Sreema Rice Mill
Versus
Union of India & Ors.

For the petitioner	:	Mr. Siddhartha Dasgupta Mr. Souvik Guha Mr. Palash Majumder
For the respondents	:	Mr. Bhaskar Prasad Banerjee Ms. A. Rajyashree Mr. C. G. Kamal
Heard on	:	2nd July, 2024
Judgment on	:	**2nd July, 2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order dated 29th December, 2023 passed under Section 73(9) of the West Bengal/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), for the tax period July 2017 to March, 2018.
2. The petitioner contends that it is the petitioner's case that neither the show cause cum demand notice dated 21st

September, 2023 issued under Section 73 of the said Act in DRC-01 nor the adjudication order dated 29th December, 2023 passed by the proper officer issued under Section 73(9) of the said Act in form DRC-07 was uploaded on the common portal.

3. Mr. Dasgupta, learned advocate representing the petitioner by placing reliance on a communication dated 23rd November, 2023 issued by the Principal Commissioner GST submits that it is the obligation of the proper officer prior to passing an adjudication order under Section 73(9) of the said Act to issue a show cause notice under Section 73(1) of the said Act and to upload the same in Form DRC-01 on the common portal.

4. Admittedly, in this case the show-cause notice in Form DRC-01 had not been uploaded in the common portal. He submits that the respondents by not uploading the adjudication order in Form DRC-07 dated 29th December, 2023 has also denied the petitioner the right to challenge the same by filing an appeal. Right to prefer an appeal is a statutory right which cannot be taken away.

5. In the circumstance, as aforesaid, it is submitted that this Hon'ble Court may be pleased to set aside not only the adjudication order passed under Section 73(9) of the said Act dated 29th December, 2023 but also the show cause notice dated 21st September, 2023, issued under Section 73(1) of the said Act.

6. Mr. Banerjee, learned advocate representing the respondents on the other hand by referring to the order dated 29th December, 2023 submits that although, the show cause cum demand notice dated 21st September, 2023 was not uploaded on the common portal due to the technical reasons, yet in terms of the provisions contained in Section 169 of the said Act, the show-cause notice had been served on the petitioner through speed post. The petitioner in response to the said show cause notice not only filed its reply on 10th October, 2023 but also availed the opportunity of personal hearing on 20th November, 2023. Having regard to the aforesaid it is submitted that mere non-uploading of a show cause notice on the common portal does not have the effect of vitiating the entire proceeding, especially when the said show cause notice was duly served on the petitioner and the petitioner had also responded to the same.
7. Mr. Banerjee, by placing a print out of copy of e-mail communication dated 20th May, 2024 which is taken on record, submits that the order in DRC 07 has been uploaded on the portal on 20th May, 2024. Having regard to the aforesaid, it is submitted that in the light of the order dated 29th December, 2023 in Form DRC-07 being uploaded, there cannot be any difficulty on the part of the petitioner to prefer an appeal.

8. Mr. Dasgupta, in response, submits that to the petitioner's knowledge, the order dated 29th December, 2023 in form DRC-07 is yet to be uploaded.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. In the instant case it would be apparent from the records that the show cause notice dated 21st September, 2023 in DRC-01 for the tax period July, 2017 to March, 2018 was not uploaded in the common portal. As correctly pointed out by Mr. Dasgupta, the Rule 142(1) of the West Bengal Goods and Services Tax Rules 2017 (hereinafter referred to as the "said Rules") read with Rule 142(5) of the said Rules requires not only the show-cause notice but also the adjudication order to be uploaded in forms DRC-01 and DRC-07 respectively on the common portal. According to Mr. Dasgupta, unless the aforesaid show cause notice and the adjudication order are uploaded on the common portal, no effect can be given thereto.

10. It is true, that in absence of the registered tax payer being made aware with regard to the show cause in the manner provided in Rule 142(1) of the said Rules, the registered tax payer may be denude the opportunity to appropriately respond to the same. But in the instant case, it is noticed that the show cause notice was duly served on the petitioner by speed post. The petitioner had also responded to

the same and was also afforded an opportunity of personal hearing. It may be relevant to note that Section 169 of the said Act specifies that the notices are required to be served in the mode and manner as provided for therein. I find that one of the modes for service of notice is to make the same available on common portal while one of the other modes for service is by registered/speed post. Admittedly, since, the petitioner had been served with the show-cause notice by speed post and the petitioner having responded to the same, the above in my view, constitutes substantial compliance of statutory provision as regards service of notice. Having regard to the above, the show-cause notice or the order does not get vitiated simply because the same had not been uploaded on the common portal. Mr. Dasgupta, learned advocate representing the petitioner could not identify any prejudice caused to the petitioner for reasons of the show cause notice not being uploaded on the common portal. Insofar as, the adjudication order dated 29th December, 2023 issued under Section 73(9) of the said Act is concerned, I must say that in absence of such disclosure, the petitioner could not have challenged the same by preferring an appeal. Since today, at the time of hearing by placing reliance on the communication dated 20th May, 2024, it has been submitted that the order passed under Section 73(9) of the said Act dated 29th December, 2023 has been uploaded on the common portal only on 20th May, 2024, I am of the view that the petitioner should be permitted to pursue its statutory remedy. If, however, for any reason the said order is yet to be uploaded, the respondents should forthwith upload the same on the portal positively within a period of 7 days from date.

11. In the event, the petitioner files an appeal from the aforesaid order within a period of three months, from the date of passing of this judgment and order or within three months from the date of uploading the order on the common portal whichever is later, by depositing requisite fees as is required for maintaining the appeal under Section 107 of the said Act, such appeal shall be heard and disposed of on merits by the appellate authority, upon giving an opportunity of personal hearing to the petitioner.

12. It is made clear that this Court has not gone into the merits of the matter. It would be open to the appellate authority to decide all points as may be raised by the petitioner, including the point of limitation, if any.

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

14. There shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

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