Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12124 of 2024

Sukumar Kundu
Versus
Union of India & Ors.

For the petitioner	:	Mr. Himangshu Kumar Ray Mr. Paban Kumar Ray Mr. Subhasis Poddar Ms. Shiwani Shaw Mr. Amit Saha
For the State	:	Mr. T.M.Siddiqui Mr. Tanoy Chakraborty Mr. Debraj Sahu Mr. Saptak Sanyal
For the SBI	:	Mr. Debasish Saha
Heard on	:	3rd July, 2024
Judgment on	:	**3rd July, 2024**.

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ petition has been filed, inter alia, challenging not only the show cause notice dated 26th July 2023 issued under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period from July 2017 to March 2018 but also the adjudication order dated 28th August 2023 issued under

Section 73(9) of the said Act, inter alia, including the notice issued under Section 79(1)(c) of the said Act dated 21st February 2024 issued in Form GST DRC-13, thereby attaching the petitioner's bank account and calling upon the petitioner's banker to make payment of a sum of Rs. 78,37,155/-.

3. It is the petitioner's case that the petitioner is a registered tax payer (RTP), under the provisions of the said Act. Although, a proceeding under Section 73 of the said Act was initiated, which culminated in an order dated 28th August 2023 passed under Section 73(9) of the said Act, the petitioner had come to learn with regard to the factum of the aforesaid proceeding only from the order of attachment dated 21st February 2024 from the petitioner's banker, State Bank of India.

4. The petitioner claims that the aforesaid show cause notice was not uploaded in the *"view notices and orders"* section of the portal and as such the petitioner did not have knowledge with regard to the same. The show-cause notice was in fact uploaded in the *"view additional notices and orders"* section of the portal. By reasons of the aforesaid, the petitioner having no knowledge of the show-cause, was prevented from responding to the same. Consequentially, an ex parte adjudication order was passed and the same was also uploaded in the *"view additional notices and orders"* section of the portal. As such, the petitioner also had no knowledge with regard to the same, until receipt of the intimation from the petitioner's banker

that a notice in form GST DRC – 13 dated 21st February 2024 had been issued and served on the petitioner's banker.

5. By drawing attention of this Court to the aforesaid show cause notice Mr. Ray, learned advocate appearing for the petitioner submits that the show cause notice does not comply with the statutory provisions of the said Act. Although, the statute requires a minimum of 30 days for seeking a response to the show cause, in the instant case only 15 days time was granted. The entire proceeding stands vitiated by reasons of failure on the part of the respondents to offer an adequate opportunity to the petitioner, firstly to respond to the show cause and secondly denying the petitioner an opportunity to challenge the said order, since both the notice as well as the adjudication order, were uploaded in the *"view additional notices and orders"* section of the portal in stead and place of *"view notices and orders"* section. To demonstrate that the aforesaid show cause notice and the adjudication order were uploaded in the *"view additional notices and orders"* section of the portal, the screenshot of the relevant part of the portal has been placed before Court. Copies thereof, are also made over to the learned advocate for the State respondents.

6. In support of his contention that the show-cause notice and the adjudication orders were required to be uploaded in the "*view notices and orders*" section of the portal, Mr. Ray has also placed reliance on the following judgments:

- ***M/s East Coast Constructions and Industries Limited, represented by its General Manager-Finance S.Suresh*** versus ***Assistant Commissioner (ST) Nungambakkam*** [1]

- ***Anhad Impex through its partner & Anr.*** Versus ***Assistant Commissioner Ward 16 Zone 2 Delhi & Ors.*** [2]

- An un reported decision of this Hon'ble Court rendered in the case of ***Probir Ghosh*** versus ***State of West Bengal & Ors.*** [3]

7. Mr. Siddiqui, learned advocate appearing for the respondents submits that although, in the show cause notice the petitioner has been afforded 15 days time to respond, the adjudication order was passed after 30 days. No attempt was made by the petitioner to file any response. Having regard to the aforesaid, it is submitted that the petitioner cannot claim to have suffered any prejudice. If the petitioner wanted to respond, he could have done so even after expiry of the period mentioned in the show-cause but before passing of the order under Section 73(9) of the said Act. The order under Section 73(9) of the said Act was passed admittedly, after 30 days from the date of issuance of the show-cause, as such the contention that the petitioner did not get adequate time to respond does not hold good. Insofar as the show cause notice and the adjudication order appearing in the *"view additional notices and orders"* section of the portal is concerned, Mr. Siddiqui submits that the respondents

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[1] 2023 (10) TMI 146-Madras High Court
[2] 2024 (2) TMI 1070-Delhi High Court
[3] WPA 8512 of 2024 (06.05.2024)

have no control over the same. It is for the GSTN authorities to upload the show cause notice and the adjudication order. By placing reliance on the provisions of the said Act he submits that the petitioner has an efficacious alternate remedy available and this Court may in the facts of the case permit the petitioner to approach the appellate authority.

8. Mr. Saha, learned advocate enters appearance on behalf the respondent no. 5. He, however, undertakes to file the *vakalatnama* on behalf of the respondent no. 5 latest by 4th July 2024.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. Admittedly, in this case the show cause notice under Section 73 of the said Act has been issued on 26th July, 2023. It is also not in dispute that the said notice was not uploaded in the *"view notices and orders"* section of the portal but was uploaded in the *"view additional notices and orders"* section. I find from the provisions of Section 73(8) of the said Act that a registered tax payer is entitled to deposit within 30 days from the date of issuance of the show cause notice, the demand arising out of the show cause notice. Taking into consideration such provision and the corresponding Rule being Rule 142(3) of the CGST Rules 2017, I am of the view that ordinarily 30 days time is required to be granted for responding to a show cause notice. However, in the facts of the case, the petitioner did not file any response to the show cause notice nor did the petitioner apply

for extension of time. I find from the pleadings on record, *inter alia*, including the disclosure made today that the show cause notice had been uploaded in the *"view additional notices and orders"* section of the portal and not in the *"view notices and orders"* section where ordinarily all orders and notices are uploaded.

11. A perusal of the print out copy of the screenshot of the dashboard of the portal would highlight that under the heading "*Services"* in the dropdown menu not only *"view notices and orders"* but the *"view additional notices and orders"* is found. Let a copy of the print out of the screenshot of the portal be retained with the record. The petitioner's advocate would, however, submit that the portal has been redesigned recently.

12. Having regard to the aforesaid, it cannot be said that the petitioner had little or no opportunity to respond to the show cause notice. Further, at this stage without going into the controversy whether uploading of a notice in the *"view additional notices and orders"* section of the portal constitutes due service of notice within the meaning of Section 69(1)(d) of the said Act, I am of the view since, there may have been some confusion in identifying the notice/orders in the pre-redesigned dashboard of the portal, the petitioner should be permitted to approach the appellate authority. If the petitioner approaches the appellate authority within a period of 6 weeks from date along with an application for condonation of delay, the appellate authority shall hear out and dispose of the appeal on

merits by condoning the delay, subject to the petitioner complying with the provisions as regards pre deposit, by taking note of defence/response to be filed by the petitioner. The judgments relied on by the petitioner are factually distinguishable and do not assist the petitioner. In none of the above cited cases any finding has been returned that uploading notice/order in the *"view additional notices and orders"* section of the portal does not constitute valid service of notice/order within the meaning of Section 69(1)(d) of the said Act.

13. Taking note of the peculiar facts of the case, I am of the view that the order of attachment dated 21st February 2024 cannot be sustained and the same is accordingly quashed.

14. With the above directions and observations, the writ petition being WPA 12124 of 2024 is disposed of.

15. There shall be no order as to costs.

16. 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.)

Saswata (AR).