29.07.2024
Sl. No. 47
Court No.5
BM

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 13465 of 2024

Brij Mohan Bagri
Vs.
Assistant Commissioner of Revenue, State Tax, Jorasanko and Jorabagan Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
... for the petitioner

Mr. Anirban Roy
Mr. Md. T. M. Siddiqui
Ms. Tanoy Chakraborty
Ms. Saptak Sanyal
... for the State

Mr. Vipul Kundalia
Mr. Amit Mishra
... Union of India

Mr. Bhaskar Prosad Banerjee
Ms. Ekta Sinha
... for the respondent nos.5 & 6

1. The present writ petition has been filed, *inter alia*, challenging the order dated 11th December, 2023 passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as "said Act"), for Tax Period April, 2021 to March, 2022.
2. Mr. Choraria, learned advocate appearing for the petitioner submits that the petitioner had been

served with a notice in Form GST DRC-01A on 28th February, 2023. The petitioner could not respond to the same and had sought for adjournment. The proper officer without adjourning the matter had purported to issue a notice of show cause dated 13th March, 2023. Upon receipt of such show cause, by reasons of an unforeseen circumstance, the petitioner applied for an adjournment on 13th April, 2023. According to Mr. Choraria the proper officer without adjourning the said matter had disposed of the same by passing an order in Form DRC-07 on 11th December, 2023 thereby disposing of the proceeding under Section 73(9) of the said Act.

3. By placing before this Court the provisions of Section 75(4) and 75(5) of the said Act, it is submitted that since the respondents had contemplated to pass an adverse order, an opportunity of hearing ought to have been granted especially when a request in this regard was made. The proper officer however, without adhering to such provision had disposed of the proceeding by passing the order dated 11th December, 2023.

4. In support of his contention that an order passed without granting an opportunity of personal

hearing cannot be sustained, he has placed several judgements, including the judgment delivered by Division Bench of Allahabad High Court in the case of ***Mahaveer Trading Company v. Deputy Commissioner State Tax & Anr.***, having neutral citation no. **2024:AHC:38829-DB**. He has also placed reliance on the judgement delivered by the Division Bench of this High Court in the case of ***Goutam Bhowmick v. State of West Bengal***, reported in **[2024] 158 taxmann.com 399 (Calcutta)**. Having regard to the aforesaid, it is submitted that this Hon'ble Court may set aside the said order and sent back the matter to the proper officer for re-adjudication of the same.

5. Mr. Siddiqui, learned advocate appearing on behalf of the respondents would submit that the petitioner has challenged the order passed by the proper officer on 11th December, 2023 by filing the writ petition on 9th May, 2024. According to him the ordinary period for preferring an appeal before the Appellate Authority under Section 107 of the said Act had long expired. The belated writ petition filed by the petitioner is only intended to delay the execution. It is submitted that although, the petitioner questions violation of principle of

natural justice, however, in the instant case, it would appear that the petitioner has not taken any steps for having the issue determined by the proper officer expeditiously. On repeated occasion, adjournment had been sought for. Having regard to the above and by referring to the judgement relied upon by Mr. Choraria, he submits that a judgement is an authority for what it decides and not what can be logically deduced thereof. The judgements relied on by the petitioner do not support his case. In view thereof, the writ petition should be dismissed with costs.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. At the first blush, I was prompted to take note of the submission made by Mr. Choraria as regards the violation of the principle of natural justice. However, when I look deep into the matter, it appears that the initial pre-showcause was served on the petitioner on 28th February, 2023 in form GST DRC-01A. The petitioner chose to not to respond to the same, instead the petitioner had applied for an adjournment. Subsequently, however, the notice in form GST DRC-01 had been uploaded on the portal on 13th March, 2023 the time to respond to which was set on 13th April,

2023. It appears that the proper Officer by the aforesaid show cause notice had not only offered opportunity to file response but also afforded a personal hearing to the petitioner. The same would reveal that the petitioner was required to file his response by 13th April, 2023 and personal hearing was also offered on the said date. As such it cannot be said that adequate time to file the response and the opportunity of personal hearing was not offered.

7. Records would however, reveal that the petitioner had waited for the last date for filling its response i.e. 13th April, 2023 and on that date had sought for an adjournment.

8. It would appear that on 11th December, 2023 an order under Section 73 of the said Act had been passed thereby determining the liability of the petitioner to the extent of Rs.12,81,670/-. Even after the aforesaid order was passed, the petitioner did not take any steps. There is no explanation forthcoming from the petitioner as to what prevented the petitioner from filing an appeal or from approaching this Court earlier.

9. Mr. Choraria would however, contend that since there has been statutory violation, the petitioner would not require to prefer an appeal and that the

aforesaid order cannot be sustained, and in support thereof had relied on two several judgements. I find that in the case ***Mahaveer Trading Company*** (supra), the only issue involved in the said case was non-compliance of provision of Section 75(4) of the said Act. Admittedly, in the said case the registered tax payer therein had appeared before the competent authority on three several dates unlike the present case. On three several dates the registered tax payer had filed its reply. It is on the basis of the replies filed by the registered tax payer that the proper officer had decided the matter without giving an opportunity of hearing to the registered tax payer. The aforesaid judgement, in my view, does not assist the petitioner. The same is distinguishable on facts. The judgement relied on by Mr. Choraria in the case of ***Goutam Bhowmik*** (supra), deals with an assessment where neither any date, time or place of any personal hearing was intimated to the registered tax payer and the Assistant Commissioner of State Tax, GST, Jalpaiguri charge, had passed the impugned order under Section 73 of the said Act. It is in those set of facts that the Division Bench of this Hon'ble Court was, *inter alia,* pleased to entertain the writ petition and set aside the order impugned on the ground of violation of principle of natural justice.

10. The present case is however, entirely different. The petitioner was afforded with repeated opportunities. The petitioner chose not to present himself. In fact, even after the order under Section 73(9) of the said Act was passed on 11th December, 2023, the petitioner sat tight over the matter and waited and watched the proceeding. It is only on 9th May, 2024 that the present writ petition has been filed. In my view, the petitioner cannot be permitted to invoke the extraordinary writ jurisdiction of this Hon'ble Court alleging statutory violation and violation of principles of natural justice in the facts of this case.

11. Having regard to the aforesaid, I am of the view that there is no scope for interference. The aforesaid order shall however, not prevent the petitioner from enforcing its statutory right, if any, if so advised. In such event, the petitioner shall be entitled to the benefit of the provision of Section 14 of the said Act and the Appellate Authority shall hear out and dispose of the appeal on merit, taking note of the fact that at present the Appellate Tribunal under Section 112 of the said Act is yet to be constituted, provided the petitioner

approaches the Appellate Authority within a period of three weeks from date. The Appellate Authority shall hear out and dispose of the appeal on merit subject to compliance of other formalities.

12. The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after due compliance.

(Raja Basu Chowdhury, J.)