16th July, 2024
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W.P.A 14336 of 2024

Sayan Biswas
Vs.
Union of India and others

Mr. Bharat Raichandani
Ms. Sweta Mukherjee
Ms. Tanima Nandy
...for the petitioner.

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

1. The present writ petition has been filed, *inter alia*, challenging the order passed under Section 74(9) of the West Bengal GST/CGST Act, 2017 (hereinafter referred to as 'the said Act') dated 13th March, 2024 for the tax period April 2018-March 2019.

2. It is the petitioner's case that his father was a registered tax payer and had during his lifetime been served with a show cause notice issued under Section 74 of the said Act in Form GST DRC-01 dated 31st August, 2023 for the tax period April 2018-March 2019. The petitioner's father (hereinafter referred to as the "registered tax payer") had duly responded to the said notice.

3. It is also the petitioner’s case that before passing of the order under Section 74(9) of the said Act the registered tax payer died.

4. Mr. Raichandani, learned Advocate representing the petitioner, by drawing attention of this court to the death certificate issued by the Kolkata Municipal Corporation appearing at page-124 of the writ petition submits that the factum of the death of the registered tax payer would corroborate from the aforesaid certificate.

5. According to him, since the order under Section 74(9) of the said Act was passed subsequent to the demise of the registered tax payer, the order including the proceedings stands vitiated and is a nullity.

6. Accordingly he prays that this Hon’ble Court may be pleased to set aside the same and remand the matter back to the proper officer by affording a further opportunity to the petitioner who is the legal heir of the registered tax payer to respond.

7. Mr. Siddiqui, learned Advocate representing the respondents, on the other hand, submits that in the instant case, the registered tax payer was not only issued a show cause notice but was afforded adequate opportunity of hearing. The registered tax payer had responded to the show cause notice.

8. Unfortunately on the date of offering personal hearing, since, the registered tax payer or his representative did not turn up the proceeding was closed and an adjudication order was passed.

9. No intimation as regards the factum of death of the registered tax payer was made to the Proper Officer. As such there is no irregularity in the order passed by the Proper Officer. The proper officer in absence of any intimation had proceeded with the adjudication. In any event the petitioner has an alternative remedy and is entitled to challenge the aforesaid order by way of an appeal. This matter does not call for interference by this Court in exercise of its extraordinary writ jurisdiction.

10. Heard the learned Advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case it would transpire that a show cause notice had been issued on the registered tax payer. The registered tax payer had also duly responded to the said show cause notice. Records would also reveal that from the order passed under Section 74(9) of the said Act, it would transpire that an opportunity of hearing was also afforded to the registered tax payer on 7th February, 2024.

11. Incidentally on 7th February, 2024 the registered tax payer had left this mortal world, though the

factum of his death was not intimated to the Proper Officer.

12. Although, Mr. Siddiqui, learned Advocate representing the respondents, has strenuously argued that by reasons of non-disclosure of the factum of death of the registered tax payer, the Proper Officer being unaware had proceeded in the matter and there is no irregularity in the order, I am of the view that by reasons of demise of the registered tax payer before the date of personal hearing, the registered tax payer could not have presented himself. Further in absence of any representation on behalf of the registered tax payer or his estate, the proceeding from such stage including the order stood vitiated as no proceeding could be continued or be decided against a deed person.

13. Consequentially the order passed by the Proper Officer under Section 74(9) of the said Act dated 13th March, 2024, which had been passed subsequent to the demise of the registered tax payer, is unenforceable and has to be declared as such.

14. At the same time, it cannot be lost sight of that the writ petitioner claims to be the legal heir of the registered tax payer. Law recognizes the right of the proper officer to proceed against the legal heirs of the registered tax payer. Although, Mr. Raichandani, learned Advocate appearing on behalf of the petitioner has sought for a liberty to re-respond to the show cause notice, I am of the view

that justice would be sub-served if the legal representative of the registered tax payer is permitted an opportunity of hearing by the Proper Officer as the registered tax payer had already filed its response and the petitioner cannot be permitted to deviate therefrom. The petitioner, however, shall be at liberty to file an additional response not inconsistent with the original response filed by the registered tax payer.

15. Accordingly, it is directed that the show cause notice issued in the name of the registered tax payer shall be deemed to be a notice issued in favour of the legal representative of the deceased registered tax payer.

16. The response given by the registered tax payer dated 3rd October, 2023 to the show-cause notice dated 31st August, 2023 as aforesaid be treated as a response filed by the legal representative of the deceased registered tax payer, however, an opportunity of hearing be afforded to the writ petitioner and/or its representative by the Proper Officer with a liberty to file additional response as indicated above.

17. The Proper Officer is directed to dispose of the proceedings as expeditiously as possible within a period of eight weeks from the date of

communication of this order in the manner indicated herein.

18. I, however, make it clear that I have not gone into the merits of the matter and it shall be open to the Proper Officer to adjudicate upon and determine the proceedings in accordance with law, without granting any unnecessary adjournments to the petitioner, if petitioner or his representative fails to appear on the appointed date, without just cause, then it shall be open to the proper officer to dispose of the proceeding in accordance with law.

19. As the sequel to the above, the order passed by the Proper Officer on 13th March, 2024 stands set aside.

20. With the aforesaid directions, writ petition stands disposed of.

21. There shall be no order as to costs.

22. 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.)