M/L 12
08.08.2024
sb
Ct 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14635 of 2024

Shree Computers Sales Private Limited
Versus
Senior Joint Commissioner of Revenue,
State Tax & Ors.

Mr. Akshit Agarwal
... For the petitioners.

Mr. Anirban Ray, Ld. GP
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 dated 27th April, 2024, passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”), for the tax period April, 2018 to March, 2019.

2. The short point that falls for consideration in the present writ petition is whether the respondents could have disposed of the proceedings without giving an opportunity of personal hearing to the petitioner, especially when the same contemplated adverse decision against the petitioner.

3. Mr. Agarwal, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to the

show cause notice dated 29th December, 2023 issued in Form GST DRC-01 would submit that no opportunity of personal hearing was afforded to the petitioner. It is submitted that by its response dated 29th January, 2024, although the petitioner had opted for personal hearing, the proper officer without affording the petitioner an opportunity of personal hearing was, inter alia, pleased to dispose of the said proceedings by passing the order which is impugned in the present writ petition.

4. Mr. Siddiqui, learned advocate enters appearance on behalf of the State respondents.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, in this case a notice in Form GST DRC 01 dated 29th December, 2023 was issued. From the show cause notice it would appear that no opportunity of personal hearing was offered to the petitioner. The petitioner had, however, while filing its reply on 29th January, 2024, had requested for personal hearing. Notwithstanding the aforesaid, the order impugned was passed without affording an opportunity of personal hearing.

6. It would appear that in terms of Section 75(4) of the said Act an opportunity of hearing is required to be

granted where a request is received in writing from the person chargeable with tax, or penalty or where any adverse decision is contemplated against such person.

7. Having regard to the aforesaid, the order impugned is vitiated on the ground of breach of provisions of Section 75(4) of the said Act.

8. In view thereof, the order dated 27th April, 2024 passed under Section 73 of the said Act is set aside and the matter is remanded back to the proper officer.

9. The proper officer is directed to re-adjudicate the aforesaid issue upon giving an opportunity of personal hearing to the petitioner or its authorized representative and to dispose of the proceeding as expeditiously as possible, preferably within a period of 8 weeks from the date of communication of this order.

10. With the above observations and directions, the writ petition is disposed of.

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.)