M/L 34
21.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14935 of 2024

Jayanta Ghosh
Versus
Union of India & Ors.

Mr. Souvik Guha
Mr. Siddhartha Dasgupta
Mr. Palash Majumder
... For the petitioner.

Mr. Bhaskar Prasad Banerjee
Ms. Ekta Sinha
... For the respondent CGST & CX

1. The petitioner by alleging that without issuance of show cause in Form GST DRC-01 and without uploading the same on the portal, a determination had been made by the respondents on 30th December, 2023 under Section 73(9) of CGST/WBGST Act 2017 (hereinafter referred to as the "said Act"), has filed this writ petition.
2. Mr. Banerjee, learned advocate appearing on behalf of the respondents, by placing before this Court the copies of show cause-cum-demand notice dated 30th September, 2023, submits that the said demand notice along with the communication for attending personal hearing was duly served on the petitioner through his registered e-mail address. According to Mr. Banerjee, during the pendency of the present writ petition a demand has also been raised in Form

GST DRC-07 on 14th June, 2024. He, however, candidly submits that by reasons of technical constraints, Form GST DRC-07 does not appropriately record the financial year and/or the tax period for which such Form GST DRC-07 had been issued and uploaded.

3. Having heard the learned advocates appearing for the respective parties, I notice that the petitioner was duly served with the show cause notice prior to passing of the adjudication order dated 30th December, 2023, by the proper officer for the tax period 2017-18 to 2022-23. It is true that the Form GST DRC-01 had not been uploaded on the portal, however, since Section 169 of the CGST/WBGST Act, 2017 contemplates service of notice by e-mail communication, I am of the view that there is no irregularity on the part of the respondents in serving show cause notice in Form GST DRC-01 on the petitioner through e-mail communication. In the instant case, it, however, appears that the summary of the order has not been uploaded in the portal. The Form GST DRC-07 has been uploaded belatedly on 14th June, 2024 is also defective. In absence of service of the Form GST DRC-07 on the petitioner, the same could not have been enforced, likewise a defective Form DRC-07 cannot be enforced.

4. Having regard thereto, I permit the respondents to upload a summary of the order along with Form GST DRC-07 on the portal.
5. Till such time the aforesaid order along with GSTDRC-07 is uploaded, the order in original passed by the respondents on 30th December, 2023 shall not be given effect to.
6. The petitioner further shall be at liberty to prefer an appeal from the order dated 30th December, 2023, upon the summary of the order and Form GSTDRC 07 being uploaded on the portal. For all practical purpose, the date of uploading of the order shall be treated as revised date of communication of the order on the petitioner.
7. With the above observations and directions the writ petition is disposed of.
8. Let the copies of the show cause –cum-demand notice dated 30th September, 2023 as also Form GST DRC -07 dated 14th June, 2024 as placed by Mr. Banerjee in Court today be retained with the records.

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.)