07.08.2024
Item No.
ML 64
Saswata

W.P.A. 15382 of 2024
Sitangshu Sekhar Masanta
versus
The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. Piyas Chowdhury
Mr. Amit Saha
...For the petitioner
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. T. Chakraborty
Mr. S.Sanyal
...For the State
Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
...For the respondent nos. 4 and 5

1. Affidavit of service filed in Court today is retained with the record.

2. Challenging the order dated 11th December 2023 passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period July 2017 to March 2018, the instant writ petition has been filed.

3. Mr. Ray, learned advocate appearing for the petitioner submits that the petitioner had no notice of the proceeding, as all notices were uploaded in the drop down menu of the dashboard under the tab *"additional notices"* of the portal, though ordinarily the same are required to be uploaded under the menu "*view notices and orders*". By drawing attention of this Court to the show cause issued in Form GST DRC 01 dated 10th September 2023, it is submitted that although, the petitioner was granted opportunity to file his response on or before 12th October 2023, the date for personal hearing was fixed on 21st September 2023. It is submitted that the respondents ought to have granted the petitioner an opportunity of personal hearing only after the time to file reply had expired. In absence of the aforesaid, the opportunity of personal hearing becomes meaningless and the

proceedings, *inter alia*, including the order passed under Section 73 of the said Act stands vitiated on such ground.

4. Mr. Siddiqui, learned advocate appearing for the respondents would, however, submit that the order impugned had been passed on 11th December, 2023 and the present writ petition has been filed only on 11th June 2024. Further, there is no explanation for the delay. He submits that no case for interference by this Court, has been made out.

5. Having heard the learned advocates appearing for the respective parties, although the petitioner complains of violation of principles of natural justice, I find that the order had been passed on 11th December 2023. The order appears to have been uploaded in the portal, though under the "*additional notices*" drop down menu. Although, the petitioner claims that the petitioner had no notice or knowledge with regard to the aforesaid order and the petitioner had only been able to ascertain the same in the last week of May 2024 when the respondent no. 3 had brought the factum of passing of the aforesaid order to the notice of the petitioner by a telephonic call, I am of the view since, the notice/order had admittedly been uploaded on the portal, without going into the controversy at this stage, whether uploading of notice/order under the "*additional notices*" drop down menu constitute adequate service in terms of Section 169(1)(d) of the said Act, by reasons of an alternate remedy in the form of an appeal being available, the petitioner should approach the appellate authority.

6. However, considering the peculiar facts of this case, I permit the petitioner to prefer the appeal before the appellate authority within 30 days.

7. In the event, the petitioner prefers an appeal within the aforesaid period along with an application appropriately explaining the delay, the appellate authority, having due regard to the above, shall condone the delay and shall hear out the appeal on merits within a period of 8 weeks from the date of filing of the appeal, subject to compliance of other formalities by the petitioner.

8. With the above observations and directions, the writ petition being WPA 15382 of 2024 is accordingly disposed of.

9. 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.*)