

M/L 89
12.08.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 15853 of 2024

Arup Mallick
Versus
Commissioner, Commercial Taxes and State Tax, & Ors.

Mr. Debasish Ghosh
Mr. Partha Sen
... For the petitioner.

Mr. Anirban Ray, Ld. GP
Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. S. Shaw
... For the State

Mr. Vipul Kundalia
Ms. Smita Das De
... For Union of India.

1. Challenging, inter alia, failure on the part of the respondents to afford the petitioner with an opportunity of personal hearing in terms of the provisions contained in Section 75(4) of the CGST/WBGST Act, 2017 (hereinafter referred to as the “said Act”), the present writ petition has been filed.
2. The petitioner complains that although a show cause notice was served on the petitioner on 14th August, 2023 in Form GSTDRC-01 and such notice, despite permitting the petitioner to submit his response, did not afford any opportunity of hearing.

3. Mr. Ghosh, learned advocate appearing on behalf of the petitioner submits that the petitioner could not file his response within the time specified inasmuch as, the petitioner was unwell. In any event, he submits since the statute recognizes a right for the petitioner to be afforded with an opportunity of personal hearing when the respondents contemplate passing of an adverse order, failure to offer such opportunity to the petitioner tantamounts to failure of complying with statutory provision.
4. He submits, on such ground alone, the final order passed by the proper officer under Section 73 of the said Act, dated 13th December, 2023 for the tax period July, 2017 to March, 2018 cannot be sustained.
5. Mr. Ray, learned Government Pleader appearing on behalf of the State respondents on the other hand would submit that despite the petitioner being afforded with an opportunity of hearing in Form GSTDRC-01, the petitioner chose not to file any response. He submits that in the facts as noted hereinabove, as the petitioner did not file any response, there was no question on the part of the respondents, offering any further opportunity of hearing to the petitioner. As such, there is no irregularity in the order impugned. No interference is called for.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. I notice in this case, the petitioner was duly served with a show cause notice in Form GSTDRC01. The petitioner, however, did not file any response to the same. The petitioner alleges that during the relevant period, the petitioner was unwell. In support thereof, the petitioner has disclosed medical prescriptions.
7. It may be noted that provisions of Section 75(4) of the said Act contemplates affording an opportunity of hearing 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. Admittedly, in this case, adverse decision was contemplated against the petitioner.
8. Having regard to the aforesaid, the order impugned dated 13th December, 2023 passed under Section 73 of the said Act for the tax period July, 2017 to March, 2018 stands vitiated on the ground of failure to comply with statutory provision. There is also some explanation on the part of the petitioner which prevented the petitioner from filing his response.
9. In view thereof, the impugned order is set aside and the matter is remanded back to the proper officer.

10. The petitioner shall be at liberty to file his response within 15 days from date.
11. The proper officer is directed to re-adjudicate the issues involved in the show-cause upon giving an opportunity of personal hearing to the petitioner or his 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.
12. It is made clear that the petitioner has not pressed any other challenge in the writ petition and the same should be deemed to have been waived.
13. 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.)