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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 16013 of 2024

Sarabindu Chatterjee
Versus
Assistant Commissioner of Revenue, State Tax,
Serampore Charge & Ors.

Mr. Somnath Roy Chowdhurty
Ms. Sanjana Jha
Mr. Thitam Chatterjee
... For the petitioner.

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

1. Affidavit of service filed in Court today is taken on record.

2. The present writ petition has been filed, inter alia, challenging a show cause notice dated 18th September, 2023, issued in Form GST DRC -01, for the tax period July, 2017 to March, 2018, under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act").

3. The petitioner complains that the said show cause notice did not contemplate offering of personal hearing to the petitioner and, as such, on such ground the final order passed by the proper officer under Section 73(9) of the said Act dated 5th

December, 2023 for the tax period July, 2017 to March, 2018 cannot be sustained and should be set aside.

4. Mr. Roychowdhury, learned advocate appearing on behalf of the petitioner would submit that subsequent to passing of the aforesaid order the respondents have already realized a sum of Rs.6,67,718/- from the petitioner. Such fact would corroborate from the electronic credit ledger of the petitioner appearing at page 45 of the writ petition.

5. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State respondents would submit that the petitioner did not respond to the show cause, subsequently the order impugned was passed. Even thereafter, no step was taken by the petitioner to prefer an appeal. After lapse of more than six months from the date of passing of the order, the present writ petition has been filed. He submits that in the given facts this Hon'ble Court may be pleased not to interfere with the order.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case a show cause notice was issued to the petitioner. It is true, that the show

cause notice did not contemplate offering an opportunity of hearing. However, the petitioner had neither filed any response to the show cause nor did the petitioner challenge such show cause before this Court immediately after such show cause was issued. In fact the petitioner permitted the order to be passed by the proper officer. Even thereafter the petitioner did not challenge the same either by filing an appeal or by filing a writ petition before this Court. Although an explanation has been provided by the petitioner as regards the delay in filing of the writ petition, I am of the view that in the given facts no interference is called for especially in view of the fact that no response to the show cause was filed by the petitioner. However, taking note of the fact that the petitioner has an alternative remedy in the form of an appeal and a sum of Rs.6,67,718/- has already been realized from the petitioner, as would corroborate from the electronic credit ledger, I am of the view that the petitioner should approach the appellate authority under the said Act.

7. If such appeal is filed by the petitioner within a period of two weeks from date along with the balance amount of pre-deposit after giving credit to the said sum of Rs.6,67,718/-, the appellate authority having due regard to the pendency of the

present writ petition before this Court by condoning the delay shall hear out and dispose of the said appeal as expeditiously as possible, preferably within a period of eight weeks from the date of communication of this order.

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

9. There shall be no order as to costs.

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.)