14.08.2024
Sl. No. 120.
M/L.
Mithun
Ct.No.5

WPA 16102 of 2024

S.S. Enterprise & Anr.
Vs.
State of West Bengal & Anr.

Mr. Dipayan Kundu,
..for the petitioners.
Mr. Anirban Ray, Ld. G.P.,
Mr. T.M. Siddique,
Mr. Tanoy Chakraborty,
Mr. Debraj Sahu
…for the State.

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.

2. Challenging an intimation dated 13th March, 2024 and the notice in Form GST DRC-01A, of even date, the present writ petition has been filed.

3. Mr. Dipayan Kundu, learned Advocate appearing on behalf of the petitioners submits that the initiation of proceeding has been made for the tax period April, 2019 to March, 2020, in the year 2024, i.e. beyond 3 years and, as such, the same cannot be proceeded with.

4. Mr. Chakraborty, learned Advocate appearing on behalf of the respondents, on the other hand, submits that since the petitioners did not respond to the notice in GST DRC-01A, a show-cause notice in

GST DRC-01 dated 16th April, 2024 has been issued for the tax period April 2019 to March 2020. He would submit that the petitioners have not yet responded to the said notice despite repeated reminders being sent to the petitioners. A copy of the aforesaid DRC-01 dated 16th April, 2024 as has placed before this Court is taken on record.

5. Having heard the learned Advocates for the respective parties, I am of the view that the scheme of the GST Act provides an opportunity of hearing to the registered tax payers prior to taking any final decision in case an adverse order is contemplated. Such scheme embodies in itself not only issuance of show-cause but issuance of a pre-show-cause notice.

6. In this case, the petitioners had not only been served with the pre-show cause notice but had also been intimated with regard to the short payment of tax by communication dated 13th March, 2024. The petitioners chose not to respond to either the pre-show cause or to the show-cause dated 16th April, 2024 which has been conveniently suppressed.

7. Having regard to the same, I am of the view that there is no scope at this stage to entertain the present writ petition especially since the petitioners

had not offered any response either to the pre show-cause or to the show-cause notice.

8. However, for ends of justice and taking into consideration that the show-cause notice issued by the respondents have not yet been adjudicated, and further taking note of the provision of Section 75(4) of the said Act which requires offering an opportunity of personal hearing prior to taking a decision in the matter, I permit the petitioners to respond to the show-cause notice issued in Form GST DRC-01 dated 16th April, 2024 within a period of two weeks from date. It shall be open to the petitioners to raise all points including the point of limitation before the proper officer.

9. The Proper Officer shall dispose of the proceedings in accordance with law upon giving an opportunity of hearing to the petitioners by passing a reasoned order.

10. With these observations and directions, the application stands disposed of.

11. There shall be no order as to costs.

(Raja Basu Chowdhury, J.)