19.08.2024
Item No.
AD 9
Saswata

W.P.A. 16301 of 2024

M/s S.M. Enterprise & Anr.
versus
The Senior Joint Commissioner of Revenue & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
...For the petitioners

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

1. The present writ petition has been filed, *inter alia*, challenging not only the show cause notice issued in Form GST DRC – 01 dated 4th September 2023 but also the order passed under Section 73 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") dated 23rd March 2024 for the tax period from April 2018 to March 2019.

2. The petitioners complain that although the statute provides the Registered Tax Payer (RTP) to be afforded with an opportunity of personal hearing when an adverse decision is contemplated, in the instant case, the respondents had decided the show cause without affording an opportunity of personal hearing to the petitioners. On such ground the order impugned should be set aside.

3. Mr. Ray, learned Government Pleader had, however, submitted that in the instant case, the petitioners did not make any request for personal hearing. According to him, in cases where request for personal hearing is made, the Registered Tax Payers are afforded opportunity of personal hearing. Having regard to the aforesaid it is submitted that the proper officer did not commit any irregularity in not affording the petitioners with any personal hearing. He submits that the petitioners have an alternate remedy in the form of an appeal and this Court ought not to interfere in this matter.

4. Heard the learned advocates appearing for the respective parties and considered the materials on record.

5. Although, in the show cause notice dated 4th September 2023 issued in Form GST DRC – 01 only the date for submission of response was given and the date, time and venue of the personal hearing were recorded as "*NA*", however, since it appears that in the reply filed by the petitioners, in serial number 7 (option for personal hearing) the box "*No*" had been ticked, this Court has sought for an explanation from the petitioners by calling upon them to file a supplementary affidavit. The petitioners had since filed the supplementary affidavit. The same is retained with the record.

6. In the said supplementary affidavit, the petitioner had claimed that the petitioners had no control over selecting the option *"No"* in the reply filed by the petitioners. According to them since no opportunity of personal hearing was afforded in the show cause when the petitioners filed the reply, the same auto selected the option for personal hearing as "*No*" .

7. I further notice that Section 75(4) of the said Act, inter alia, provides that opportunity for personal hearing shall be granted where request is received in writing from a person chargeable with tax or penalty or where any adverse decision is contemplated against such person. Admittedly, from the show cause it would appear that adverse decision was contemplated against the petitioners.

8. Having regard to the above, I am of the view that the proper officer was duty bound to afford an opportunity of personal hearing to the petitioners. Failure on the part of

the proper officer to afford the petitioners with personal hearing vitiates the order dated 23rd March 2024 for the tax period from April 2018 to March 2019. In view thereof, the aforesaid order dated 23rd March 2024 is set aside and the matter is remanded back to the proper officer.

9. The proper officer shall, upon affording the petitioners with an opportunity of personal hearing, hear out and dispose of the same within a period of 6 weeks from the date of communication of this order.

10. With the above observations and directions, the writ petition being WPA 16301 of 2024 is accordingly disposed of.

11. There shall be no order as to costs.

12. 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.*)