Item no.
ML 173
Ct. 5
23.09.2024
Saswata

WPA 17281 of 2024

Khagaul Loco Labour's Cooperative Society Limited & Anr.
versus
The Commissioner of Commercial Taxes & Ors.

Ms. Sweta Mukherjee
Mr. Pradeep Pandey
...For the petitioners
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the State respondents

1. Affidavit of service filed in Court today is retained with the record.
2. Challenging, inter alia, an order passed under Section 73 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") dated 5th April 2024 for the tax period from April 2018 to March 2019, the instant writ petition has been filed.
3. Ms. Mukherjee, learned advocate appearing for the petitioners by drawing attention of this Court to the show cause notice issued in Form GST DRC – 01 dated 29th November 2023 submits that although the proper officer was obliged to offer the petitioners with an opportunity of personal hearing, the same had not been offered. The petitioners in response to the show cause notice had opted for personal hearing. Additionally although, the proper officer had recorded in his order dated 5th April 2024, the factum of the petitioners opting for personal hearing, the order is, however, silent as regards the

adjournment sought for by the petitioners on 29th January, 2024. No effective opportunity of personal hearing was given to the petitioners since, the petitioners' application for adjournment dated 29th January 2024 was turned down. According to Ms. Mukherjee the last date of passing the order was 30th April 2024 and as such, there was no reason for the proper officer to deny the adjournment or not to afford the petitioners with a reasonable opportunity of hearing.

4. Mr. Ray, learned Government Pleader, on the other hand submits that in the instant case the petitioners were afforded with an opportunity of personal hearing on 31st January 2024. Unfortunately, the petitioners were not ready and willing to accept the same. Although, an adjournment application was filed by the petitioners, the same had been turned down by the proper officer.

5. Having heard the learned advocates appearing for the respective parties and taking note of the provisions contained in Sections 75(4)and 75(5) of the said Act and the peculiar facts of this case as noted hereinabove where the petitioners' application for adjournment was turned down without offering further opportunity, I am of the view that the matter should be remanded back to the proper officer for readjudication.

6. In view thereof, I set aside the order passed by the proper officer on 5th April 2024 and permit the proper officer to determine the show cause notice by passing an order under Section 73 of the said Act, within a period of 12 weeks from the date of communication of this order.

7. The proper officer shall, upon affording the petitioners with an opportunity of personal hearing, dispose of the show cause notice by deciding the same in accordance with law.
8. Since, no other point survives for adjudication, the writ petition being WPA 17281 of 2024 is 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.)