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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17663 of 2024

Kuntal Tarafdar
Versus
Assistant Commissioner of State Tax & Ors.

Mr. Sandip Choraria
... For the petitioner.

Mr. Anirban Ray, Ld.GP
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. D. Sahu
... For the State.

1. Being aggrieved by the order dated 23rd March, 2023 passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") in respect of the tax period July, 2017 to March, 2018, an appeal had been filed under Section 107 of the said Act.

2. Mr. Choraria, learned advocate appearing on behalf of the petitioner would submit simultaneously with the filing of the appeal the petitioner had made a pre-deposit of Rs.40,282/- as was required for maintaining the appeal. By referring to the provisions of Section 107(8) of the said Act he submits that the appellate authority was bound to give an opportunity of hearing to the petitioner prior to disposal of the appeal. In this case the appellate

authority has, in fact, denied the reasonable opportunity to the petitioner of being represented. He submits that although the matter was fixed for hearing on 22nd November, 2023 at 11.30 A.M. on a perusal of the aforesaid order it would reveal that three several adjournments have been granted. But on a closer scrutiny, it would reveal that the three adjournments were on the same date itself. He submits that in the facts as noted hereinabove, the petitioner had been denied opportunity of hearing. The aforesaid cannot be sustained and the matter should be remanded back to the appellate authority.

3. Mr. Siddiqui, learned Additional Government Pleader appearing on behalf of the State respondents submits that the order cannot be supported.

4. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that the appellate authority on 22nd November, 2023 had taken up the matter for consideration. Since, none appeared on behalf of the appellant/petitioner he had adjourned the matter *suo motu* and fixed the hearing at 1.00 p.m., again on 3.00 p.m. and thereafter 5.00 p.m. and had ultimately decided the matter *ex parte*. In this case, I may note if, the

appellate authority had considered it fit to adjourn the matter, it was the obligation of the appellate authority to communicate the factum of such adjournment to the petitioner when none was present on behalf of the appellant/petitioner on 22nd November, 2023 at 11.30 a.m. In absence of any notice of the successive adjournments on the same date, the petitioner in my view was prevented from appearing before the appellate authority on the adjourned time at 1.00 p.m., again at 3.00 p.m. and thereafter at 5.00 p.m. Having regard thereto, I am of the view that the aforesaid order cannot be sustained and the same is set aside.

5. The matter is remanded back to the appellate authority. It is made clear that the matter should be dealt with by any other authority apart from the officer concerned, who had dealt the matter.

6. 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.)