5th September, 2024
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**W.P.A 18416 of 2024**

Vikash Kumar Giri
Vs.
The Assistant Commissioner, Bally and others

Mr. Abhijat Das
Ms. Aratrika Roy
...for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State.

1. Challenging an adjudication order passed under Section 74 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act') the instant writ petition has been filed.

2. Mr. Das, learned Advocate appearing on behalf of the petitioner, by drawing attention of this court to the reply of the show cause notice issued dated 20th March, 2024 in respect of the tax period April 2022 to March 2023 would submit that immediately upon receipt of the show cause the petitioner had responded to the same and had opted for personal hearing. He submits that in his response, he had sought for an adjournment for fifteen days to respond to the show cause. He submits that the proper officer despite receipt of the response filed by the petitioner by disregarding his prayer for

adjournment and without affording the petitioner an opportunity of hearing had determined the show cause by passing an order under Section 74 of the said Act.

3. Mr. Sanyal, learned Advocate enters appearance on behalf of the respondents.

4. He acknowledges the fact that an application for adjournment was made. According to him, since the grounds for adjournment were not acceptable adjournment was declined. He, however, candidly acknowledges the fact that no personal hearing was given to the petitioner.

5. Having heard the learned Advocates appearing on behalf of the respective parties and having considered the materials on record, I find that although a show cause was issued calling upon the petitioner to respond by 22nd March, 2024 the said show cause did not provide for date and time of personal hearing.

6. Although in the response filed by the petitioner on 20th March, 2024 the petitioner had not only prayed for an accommodation for fifteen days to give response to the show cause but had also opted for personal hearing, the proper officer by refusing the adjournment had determined the petitioner's liability without affording the petitioner an opportunity of personal hearing.

7. I find that Section 75(4) of the said Act provides for grant of personal hearing when an adverse order is contemplated.

8. In this case not only, did the petitioner apply for personal hearing but the show cause itself contemplated passing of an adverse order against the petitioner.

9. Having regard thereto, in my view, the proper officer was obliged to afford opportunity of hearing to the petitioner, having not done so the order stands vitiated on such ground as also on the ground of violation of principles of natural justice.

10. In view thereof, the order dated 27th March, 2024 is set aside.

11. The petitioner shall be at liberty to file his response to the show cause within a period of two weeks from date. The proper officer shall, upon giving opportunity of hearing to the petitioner dispose of the proceeding by passing a reasoned order.

12. It is made clear that if the petitioner for any reason does not file his response to the show cause within the time stipulated herein, it shall be open to the proper officer to proceed subject to compliance of the provisions of Section 74(5) of the said Act.

13. With the above observations, writ petition stands disposed of.

14. There shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

**(Raja Basu Chowdhury, J.)**