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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19108 of 2024

Vijay Krishna Gupta
Versus
The State of West Bengal & Ors.

Mr. Sakya Sen
Mr. Avra Mazumder
Ms. Alisha Das
Mr. Suman Bhowmik
Mr. Sunil Kumar Gupta
Mr. Samrat Das
Ms. Elina Dey
Mr. Sourendra Nath Banerjee

… For the petitioners.

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

Mr. Moyukh Mukherjee
… For Kaustav Lal Mukherjee

1. Affidavit of service filed in Court today is taken on record.

2. The instant writ petition has been filed, inter alia, questioning the adjudication order dated 29th April, 2024, passed under Section 73 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act").

3. The petitioner contends that on 10th April, 2023, the petitioner was intimated with regard to certain

discrepancies in its returns, *inter alia*, alleging short payment of tax/excess availment of Input Tax Credit (ITC). Immediately, upon receipt of such communication, the petitioner had verified its accounts and having found that the discrepancies noted did not tally with its records had taken steps to respond to the same.

4. It is the petitioner's case that subsequently a notice under Section 73(1) of the said Act dated 12th December, 2023, was served on the petitioner in respect of the tax period April, 2018 to March, 2019. By communication in writing dated 16th October, 2023 the petitioner through his erstwhile advocate had responded to the said show cause notice and had submitted certain documents.

5. Mr. Sen, learned advocate appearing on behalf of the petitioner would submit that the proper officer despite contemplating an adverse decision against the petitioner without affording an opportunity of hearing had decided the case.

6. By drawing attention of this Court to the show cause notice dated 12th December, 2023 he submits that although, the petitioner was granted time till 15th January, 2024 to respond to the show cause, the personal hearing was offered on 5th January,

2024.

7. According to Mr. Sen, ordinarily, the personal hearing is granted to elucidate the response. In this case since, an opportunity of hearing was given prior to 15th January, 2024, the same does not constitute appropriate opportunity.

8. According to him, the aforesaid order has been passed in violation of the provisions contained in Section 75(4) of the said Act.

9. He submits that in the facts as noted hereinabove, the order impugned should be set aside and the matter should be remanded to the proper officer for re-adjudication.

10. Mr. Chakraborty, learned advocate appearing on behalf of the State respondents on the other hand would submit that despite being afforded with an opportunity of hearing the petitioner chose not to appear. In fact, the petitioner's advocate by communication in writing dated 12th March, 2024 had submitted that due to unforeseen event none could appear for personal hearing and the instant case should be closed in the light of documents already submitted. He submits that in the factual backdrop as aforesaid, there is no irregularity on

the part of the proper officer in concluding the proceeding and determining the liability of the petitioner. According to him, no interference is called for since the petitioner has an alternative remedy in the form of an appeal before the appellate forum.

11. Mr. Sen in response submits that the letter dated 12th March, 2024 is without authorization. The petitioner always was interested to contest the proceeding and place its case.

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

13. In the instant case, it may be noticed that although it has been argued on behalf of the petitioner that the proper officer without giving any opportunity of hearing had concluded the proceeding, from the documents on record, inter alia, including the letter issued by the petitioner's advocate on 12th March, 2024, it would transpire that the petitioner's advocate has requested the proper officer to close the case.

14. Having regard to the aforesaid stand of the petitioner's advocate and the petitioner's claim that

the above letter was without authorization, this Court by an order dated 22nd August, 2024 had directed the petitioner to serve a copy of the writ petition on the erstwhile advocate of the petitioner.

15. Pursuant to the aforesaid direction, the erstwhile advocate has appeared and is represented in Court today. It is submitted on his behalf that there had been communication gap, which led to issuance of the letter dated 12th March, 2024 and the recording that the case should be closed on the basis of materials on record.

16. Having heard to the petitioner's advocate, having taken note of his aforesaid stand, and in the peculiar facts of the case, I am of the view that the proper officer should afford a fresh opportunity of hearing to the petitioner. However, at the same time taking note of the fact that a determination has already been made, I direct the petitioner to deposit towards pre-deposit, with the respondents a sum of Rs.10 lakhs within a period of two weeks from date.

17. In the event the petitioner deposits the aforesaid sum within a period of two weeks from date, the proper officer having regard to the deposit made by the petitioner and in the peculiar facts of

the case shall decide the matter afresh by giving an opportunity of hearing to the petitioner. The petitioner shall be at liberty to rely on additional documents. The deposit made by the petitioner shall be retained to the credit of the proceeding till a fresh decision is taken by the proper officer.

18. As a sequel thereto, the order passed by the proper officer under Section 73 of the said Act dated 29th April, 2024 and the demand made in Form GSTDRC-07 in respect of the tax period April, 2018 to March, 2019 should set aside.

19. It is made clear if the petitioner does not comply with the direction as regards the deposit as indicated hereinabove, within the time specified, the aforesaid order shall not enure to the benefit of the petitioner and the writ petition shall stand dismissed without any further reference to this Court.

20. Since, no affidavit-in-opposition has been called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents as also by the erstwhile learned advocate of the petitioner represented by Mr. Mukherjee.

21. 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.)