M/L 210
23.09.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19798 of 2024

Raghu Bansha Maurya
Versus
The Assistant Commissioner Bally & Ors.

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

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

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

2. Challenging, inter alia, the order passed under Section 74 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") dated 3rd April, 2024, for the tax period August, 2020, the instant writ petition has been filed.

3. Mr. Das, learned advocate appearing on behalf of the petitioner by drawing attention of this Court to the show cause notice dated 1st February, 2024, issued in Form GST DRC 01, would submit that though the respondents were obliged to afford an opportunity of hearing to the petitioner, no such opportunity was afforded. He submits that the aforesaid constitutes violation of the provisions contained in Section 75(4) of

the said Act.

4. Mr. Siddiqui, learned Additional Government Pleader enters appearance on behalf of the respondents. He, however, acknowledges the fact that in the instant case, no opportunity of hearing was granted to the petitioner.

5. Having heard the learned advocates appearing for the respective parties and considering the provisions contained in Section 75(4) of the said Act which, inter alia, provides that where any adverse decision is contemplated against a person, an opportunity of hearing is required to be given whether or not a request is received in writing from such person, I am of the view that the proper officer was obliged to afford opportunity of hearing to the petitioner.

6. Admittedly in this case, no opportunity of hearing was afforded to the petitioner. Having regard thereto, I am of the view that the order dated 3rd April, 2024 for the tax period August, 2020 stands vitiated on the ground of violation of the statutory provisions.

7. The petitioner having approached this Court within the reasonable period after passing of the aforesaid order, I remand the matter to the proper officer for readjudication.

8. The proper officer, upon giving an opportunity of

hearing to the petitioner shall decide the show cause within a period of sixteen weeks from the date of communication of this order, in accordance with law.

9. As a sequel thereto, the order passed by the proper officer under Section 74 of the said Act dated 3rd April, 2024 for the tax period August, 2020, stands set aside.

10. 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.)