03 SM 04.12.2024

WPA 21923 of 2024

Soumyendu Bikash Jana
Vs.
The Union of India & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Mr. Sushant Bagaria
Mr. Subal Saha
... for the petitioner

Mr. A. Ray
Md. T. M. Siddiqui
Mr. T. Chakraborty
Mr. D. Sahu
Mr. S. Sanyal
... for the State

Mr. Kaushik Dey
Mr. Abhradip Maity

... for the respondent nos.5 & 6

Mr. Uday Sankar Bhattacharya
Mr. Anurag Roy

... for the respondent CGST Authorities

Learned Counsel appearing for the petitioner submits that the respondent no.4 issued a summary of show cause notice in FORM GST DRC-01 having reference no.ZD190923010137H dated 7th September, 2023 for the Financial Year 2017-2018. The said show cause notice was issued with a note "N.A." in personal hearing column and no opportunity of personal hearing was granted to the petitioner though it is mandatory on the part of the adjudicating authority to grant an opportunity of hearing to the petitioner before concluding adjudication but to the dismay of the petitioner, without granting any opportunity of hearing, the adjudicating authority passed the adjudication order on 29th December, 2023.

Learned Counsel further relies on a judgment of the Division Bench of our High Court being "***Goutam Bhowmik vs. State of West Bengal reported in (2024) 158 taxmann.com 399 (Calcutta)"*** wherein it has been categorically stated:

"9. Thus, as per provisions of sub-Section 4 of Section 75 of the WBGST/CGST Act, 2017, when the proper officer contemplated a decision against the petitioner/assessee, then it was mandatory for him to afford an opportunity of hearing. From the perusal of the show cause notice dated 15.01.2021, it is evident that the proper officer has declined to afford an opportunity of hearing to the petitioner inasmuch as it has not communicated any date, time and venue of hearing.

10. A Division Bench of the Allahabad High Court in "***Bharat Mint and Allied Chemicals v. Commissioner of Commercial-tax, reported in (2022) 59 GSTL 394 (Allahabad)"***, on similar set of facts, has held as under:-

"7. In the table below the aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) of the Act, 2017 provides that opportunity of personal hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

8. Section 75(4) of the Act, 2017 reads as under:-

"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person."

Considering the facts and circumstances of the present case and the provisions of Section 73 read with Section 75(4) of the WBGST/CGST Act, 2017, this Court is of the view that proper officer is bound to afford an opportunity of hearing, where either a request in writing is received by him from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. To afford opportunity of hearing is a statutory mandate which cannot be violated by proper officer and in the event such of violation, the order passed by the proper officer cannot be sustained. Under the circumstances, the impugned order dated 29th December, 2023 passed by the proper officer for the period 2017-2018 cannot be sustained and deserves to be quashed and the matter deserves to be remanded to the concerned authority to pass an order afresh in accordance with law after affording reasonable opportunity of hearing to the petitioner.

The writ petition being WPA 21923 of 2024 is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)