

05.03.2024
SL.05, Ct.3
R.Bhar

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

W.P.A. 230 of 2024

**Jayanta Ghosh and Ors.
-Vs.-
The State of West Bengal and Ors.**

Mr. Himangshu Kumar Ray
Mr. Abhilash Mittal
.....for the petitioner

Mr. Dilip Kumar Agarwal
Mr. Momemur Rahman
.....for the State

The petitioner has challenged the impugned order dated 17.01.2024 passed by respondent no.3 on the ground that he has not been afforded an opportunity of hearing as per Section 107(8) under the Central Goods and Services Tax, 2017 and the West Bengal Goods and Services Tax, 2017. The petitioner has also challenged the order dated 11.08.2023 passed under Section 74 of the GST Act raising a demand on the petitioner for an amount of Rs.40,73,996.84 for the period April 2022 to March 2023 in violation of provision of Section 74 of the GST Act.

Learned counsel for the petitioner pointed out that show cause notice itself reflects that personal hearing should have been given to the petitioner in person or through his authorized representative but the same was not adhered to. It is the case of the petitioner that the show cause notice itself reflects that the date of personal hearing, time of personal hearing and the venue of personal hearing has been left blank which itself is in violation of the principles of natural justice. Further, it is the contention of the petitioner that in pursuance

to the show cause notice, an order was passed on 11.08.2023 under Section 74 of the GST Act in total violation of the principles of natural justice by not affording any opportunity of personal hearing to the petitioner. The petitioner challenged the same before the appellate authority under Section 107 of the GST Act. The appellate authority vide order dated 17.01.2024 dismissed the appeal of the petitioner on the ground of limitation.

The petitioner relied upon the judgment passed by the Hon'ble Division Bench of Calcutta High Court in MAT No. 205 of 2023 titled as *Goutam Bhowmik v. State of West Bengal* decided on 9th January, 2024 wherein it has been held that under Section 75(4) it is mandatory to grant personal hearing. Section 75(4) of the Central Goods and Services Tax, 2017 is quoted hereunder:-

“(4) 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”.

From the perusal of Section 75(4) of the Act, it is evident that opportunity of hearing is to be granted by authorities under the Act wherein request is received from the person chargeable with tax or penalty or opportunity of hearing where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against a 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 of such person, as has been held in MAT No. 205 of 2023.

Learned counsel for the petitioner further relies upon another judgment dated 18.10.2023 passed by the Hon'ble Division Bench of Calcutta High Court in MAT 1361 of 2023 titled as *Murtaza B Kaukawala v. State of West Bengal* to substantiate that delay can be condoned if the principles of natural justice has been violated by not providing opportunity of hearing to the petitioner.

Learned counsel for the respondent fairly states that the delay can be condoned if the appeal is time barred. He relied upon the decision of this Court in MAT 81 of 2022 titled as *S.K. Chakraborty & Sons v. Union of India & Ors.* wherein the Court has held as under:-

“Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filing the appeal can be extended by the Appellate Authority”.

Applying the principle of the above mentioned authorities, this Court finds that the appellate authority has violated the principle of natural justice by not affording an opportunity of hearing to the petitioner. The delay in filing of the appeal is condoned and the present writ petition is allowed by setting aside the impugned order dated 17.01.2024.

It is hereby directed that the appellate authority shall give personal hearing to the petitioner and his appeal shall be decided on merits.

As the petitioner deposited pre-deposit amount 10% of the disputed tax amount, there shall be a stay of the recovery proceedings till disposal of the appeal case.

With the aforesaid direction, the present writ petition is disposed off.

(Gaurang Kanth, J.)