04.03.2024
SL.01, Ct.3
R.Bhar

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

W.P.A. 361 of 2024

Khokan Sengupta
-Vs.-
The Chief Commissioner CGST and Central Excise, Excise Zone and Ors.

Mr. Bikramaditya Ghosh, Adv.
Ms. Supriya Singh, Adv.
……for the petitioner

Mr. Ratan Banik, Adv.
Mr. Bishwaraj Agarwal, Adv.
Mr. Saptarshi Bank, Adv.
……for the respondents

The petitioner filed the present writ petition challenging the impugned order dated 28.03.2023 passed by respondent no.2 in pursuance of the show cause-cum-demand notice dated 20.04.2021. By the impugned order, the respondent no.2 confirmed the service tax, Swach Bharat Cess and Krishi Kalyan Cess of the petitioner on the undeclared suppressed values of taxable rates from the Financial Year 2015-16 and 2016-17. In addition, the respondent no.2 also imposed interest on the taxable amount under Section 75 of the Finance Act, 1994 read with Section 171(2) of the CGST Act, 2017 and penalty equivalent to the confirmed tax amount.

It is the contention of the learned counsel for the petitioner that at the relevant point of time, the petitioner was diagnosed with severe cardiac problem for which he was undergoing treatment in Bangalore and thus he could not effectively participate in the proceeding before respondent no.2. Hence, it is the contention of the learned counsel for the petitioner that the impugned order was passed without affording any meaningful opportunity to the petitioner to represent himself.

In view of the aforesaid submission, learned counsel for the petitioner prays for setting aside of the impugned order and remanding the matter back to the respondent no.2 for fresh adjudication and for granting an opportunity of hearing to the petitioner before the respondent authority.

Learned counsel for the CGST appears and states that the petitioner was granted five opportunities of hearing which is also reflected from the impugned order and the petitioner has chosen not to file any response or to participate in the proceeding before the respondent authorities. It is further submitted by the counsel for the respondent that the medical documents relied upon by the petitioner reflects the name of Mr. Mohan Sengupta and not of the petitioner. The same is refuted by the counsel for the petitioner who states that Mohan Sengupta and the present petitioner are the same. It is further stated by the counsel for the petitioner that the petitioner Khokan Sengupta's name is reflected in the PAN card as Mohan Sengupta. This Court fails to understand as to how a person has been issued a PAN card in a different name and is claiming to be the same person as reflected in the present writ petition.

This Court has heard the argument advanced by counsel for both the parties and have perused the documents on record. From the impugned order it is evident that the same pertains to be service tax leviable for the year 2015-16 and 2016-17. The respondent no.2 had issued the show-cause notice on 20.04.2021. Since no reply was filed by the petitioner, another letter dated 21.10.2022 was issued. However, the petitioner failed to submit his written reply to any of the above issued notices. Hence, with an intention to afford personal hearing to the petitioner, the adjudicating authority issued notices dated 30.01.2023 and 13.01.2023 fixing the date of personal hearing on 11.01.2023 and 24.01.2023 respectively. The authorized representative of the petitioner appeared before the adjudicating authority on 24.01.2023 and sought time to produce documents. Considering the request of the authorized representative of the petitioner, the hearing was again scheduled on 07.02.2023, 02.03.2023 and 21.03.2023. However, the petitioner failed to submit any reply or participate in the course of the hearing even after being afforded many opportunities and sought further adjournment. This Court has examined the medical documents placed on record of the petitioner. As per the said document, the person Mohan Sengupta, who is alleged to be same as the petitioner, was hospitalized during the period 20.02.2023 to 02.03.2023. The petitioner had appeared through his representative before the adjudicating authority on 24.01.2023. However, there is no explanation forthcoming as to what prevented the petitioner from submitting his reply on 07.02.2023 or on 21.03.2023. Though the petitioner had received the show cause notice issued by the respondent no.2 and had entered appearance, however, had failed to submit any written reply or produce any document before the respondent authority. It is reflected from the notices that enough opportunity was given to the petitioner to present his case before the adjudicating authority. However, the petitioner chose not to produce any documents leading to passing of the impugned order. This Court feels that the respondent authorities had given enough opportunity to the petitioner to represent himself before the adjudicating authority and has complied with the principles of natural justice by granting opportunities.

In view of the aforesaid, this Court is not inclined to interfere with the impugned order. In view of the same, the present writ petition is dismissed. However, the petitioner is at liberty to pursue his remedy available in law.

(Gaurang Kanth, J.)