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03.10.2024
Court No. 2
AGM

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

**WPA 1409 of 2024**

M/s Jyoti Filling Station & Ors.
Vs.
Senior Joint Commissioner of Revenue & Appellate Authority & Ors.

Mr. Dhiraj Lakhotia.
Ms. Radhika Agarwal.
Mr. Gautam Kumar Gupta.
Ms. Meghna Joshi.
Ms. Khushi Kundu.
… for the petitioners.

Mr. Pretom Das.
Ms. Rima Sarkar.
… for the State.

Mr. Ratan Banik.
Mr. Dilip Kumar Agarwal.
Mr. Biswaraj Agarwal.
… for the respondent GST Council.

1. The petitioner is aggrieved by the order dated 27th June, 2023 passed under Section 73 WBGST Act 2017. The said order mentions that the petitioner availed ITC as CGST and SGST which was to be reversed but as he did not reverse the same despite intimation given, he has to pay the amount along with interest.

2. On a perusal of the show cause notice under Section 73 issued to the petitioner on 26th May, 2023 it appears that the date, time and venue for personal hearing in connection with the show cause notice was mentioned 'NA'. It has been submitted that mention of

the letters 'NA' implied that no reply was required to be filed by the petitioners.

3. Under such circumstances, a further opportunity of hearing ought to have been given had the authority intended to pass any adverse order against the firm.

4. In support of the aforesaid submission the petitioners rely upon the order dated 12th August, 2024 passed by a Coordinate Bench of this Court in **WPA 1494 of 2024** (**Bajrang Lal Chordia –Vs- the State of West Bengal & Ors**.) wherein under similar circumstances, the Court was of the opinion that the assessment based on a show cause notice denying personal hearing to the petitioner is defective. The Court was pleased to set aside the show cause notice and the assessment order.

5. Upon hearing the parties and on perusal of the documents annexed to the writ petition, it appears that in the present case there has been violation of the principles of natural justice in not granting an opportunity of hearing to the petitioners prior to passing an adverse order despite issuance of a show cause notice. As the authority passed adverse order, as such, an opportunity of hearing ought to have been given to the petitioners.

6. In view of the above, the impugned show cause notice and the subsequent assessment order both stand set aside.

7. The adjudicating authority will be at liberty to initiate fresh proceeding under Section 73 of the Act giving reasonable opportunity of hearing to the petitioners. The period of limitation would commence from the date of notice to be issued in favour of the petitioners.

8. The writ petition stands disposed of.

9. Affidavit-of-service filed in Court today be kept with the records.

10. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Amrita Sinha, J.)**