12.08.2024
Sl.15
Ct. No.2
Suman

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

WPA 1494 of 2024

Bajrang Lal Chordia
-Versus-
The State of West Bengal and Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. M. Joshi
Ms. Khusi Kundu
..for the petitioner

Mr. Subir Kumar Saha
Ms. Rima Sarkar
.for the State

A show cause notice dated March 15, 2023, under Section 73 of the West Bengal Goods and Services Act, 2017, was issued to the petitioner, seeking a response within seven days from the date of the notice. The petitioner failed to respond. Subsequently, another notice dated March 22, 2023, was issued, granting the petitioner five additional days to reply. Although this notice indicated that an opportunity for a hearing might be provided, it failed to specify any date, time, or venue for the hearing. The petitioner again did not respond. As a result, an assessment order under Section 73(9) of the Act was issued on December 1, 2023, confirming a demand of Rs.2,40,241/-.

The petitioner appealed the assessment order under Section 107 of the Act on December 1, 2023.

However, the Appellate Authority, by an order dated July 25, 2024, declined to accept the appeal as it was deemed time-barred.

Challenging these proceedings, the petitioner has filed this writ petition before this Court. The petitioner contends that he was not afforded a proper opportunity for a hearing by the authority and relies on the judgment reported at **(2024) SCC OnLine Cal 372 (*Goutam Bhowmik v. State of West Bengal*)**.

The learned advocate for the Revenue argues that the petitioner had the option to seek clarification regarding the date and place of the hearing but chose not to participate. Therefore, the petitioner’s claim of a violation of the principles of natural justice is not sustainable. Additionally, it is argued that the Appellate Authority could not have condoned the delay in filing the appeal, and thus, this Court should refrain from interfering with the Appellate Authority’s order.

A perusal of the show cause notice dated March 22, 2023, clearly indicates that the authority marked 'not applicable' in the columns for the date, time, and venue of the personal hearing. This suggests that the authority was not inclined to provide a personal hearing to the petitioner, leading to the assessment order dated December 1, 2023.

The learned advocate for the petitioner has appropriately relied on the judgment in ***Goutam***

Bhowmik's case. The relevant part of the judgment is quoted below:

> "**11.** Considering the facts and circumstances of the present case, the provisions of Section 73 read with Section 75(4) of the WBGST/CGST Act, 2017, we are 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 of violation the order passed by the proper officer cannot be sustained. Under the circumstances, the impugned order dated 25.03.2021 passed by the proper officer for the period April 2018 to March 2019 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/appellant."

In my view, the petitioner's case is covered by this decision.

If the initial action is bad, subsequent proceedings based on such action cannot be sustained. **[See: (2011) 5 SCC 142 (*Chairman-Cum-Managing Director, Coal India Limited v. Ananta Saha*)]**.

The assessment was based on a show cause notice denying the petitioner the right to a personal hearing. Consequently, the proceedings based on the defective show cause notice must go.

Therefore, the show cause notices dated March 15, 2023, and March 22, 2023, the assessment order dated December 1, 2023, and the order of the Appellate

Authority dated July 25, 2024, are set aside. The authority is permitted to initiate a fresh proceeding under Section 73 of the Act of 2017, giving an opportunity of hearing to the petitioner. Should a new proceeding be initiated, the limitation under Section 73(10) of the Act should commence from the date of the new notice.

Accordingly, **WPA 1494 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)