23.09.2024
Court No. 2
Sl. No.18
KB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A. 1899 of 2024

Bablu Agarwal
-versus
The State of West Bengal & Anr.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghana Joshi
Ms. Khushi Kundu
...For the Petitioner.

Mr. Momenur Rahaman
Mr. Pradip Sarkar
...For State.

Affidavit of service filed in Court today is taken on record.

The order under Section 73(9) of WBGST & CGST Act, 2017 read with Rule 142(5) of WBGST and CGST Rules, 2017 dated 6th March, 2024 is impugned in the instant writ petition.

The petitioner has raised several issues with the said order. First it has been canvassed that FORM GST-ASMT-10 has not been issued prior to issuance of notice under Section 73(9) of the Act.

Rule 99(1) of CGST Rules, 2017 prescribes that where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of Section 61 with reference to the information as available with him, and in case any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantify the amount of tax, interest and any other amount payable in relation to such discrepancy.

Categorical submission of the petitioner is that the aforesaid Rule was not followed prior to issuing the impugned notice under Section 73(9).

The Court, at the present, is only adjudicating whether the authority acted in accordance with the aforesaid provision of law.

Learned advocate representing the State respondents submits that there is a provision for appeal which the petitioner ought to have availed of. The petitioner did not raise the objection before the adjudicating authority. The petitioner was given a personal hearing and thereafter the show cause notice was issued to him.

I have heard the submissions made on behalf of both the parties.

It is settled law that where a procedure is prescribed in the Statute, the authority is bound to act in accordance with the same. The authority ought not to have taken steps by skipping the statutory provision and issue notice to show cause and submit that the petitioner ought to have raised the issue at the time of hearing.

As the provision of law is very specific that notice in FORM GST ASMT – 10 is to be issued informing the registered person of the discrepancy and seeking his explanation thereto, the said opportunity ought to have been given to the petitioner. Not providing such opportunity is acting de hors the provision of law and in violation of the principle of natural justice.

In view of the above the order impugned is set aside on this ground alone.

The adjudicating authority is directed to proceed with the matter afresh after following all provisions in law and conclude the proceeding within the time limit as prescribed in the Statute.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)