

09.01.2024
SL No.53
srimanta

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

**IA No.:CAN/1/2023
in
MAT 206 of 2023**

**The Piku Saha
Vs.
The State of West Bengal & Ors.**

Mr. Himangshu Kumar Ray,
Mr. Abhilash Mittal
...for the appellant/petitioner.
Mr. Subir Kumar Saha,
Mr. Rima Sarkar
...for the State respondents.

Heard Mr. Himangshu Kumar Ray, learned Counsel for the appellant and Mr. Subir Kumar Saha, learned Counsel for the State respondents.

This appeal has been filed praying to set aside the judgment and order dated 18.11.2023 in WPA/1864/2023 (Piku Saha -Vs.- The State of West Bengal & Ors.) passed by the learned Single Judge, whereby the writ petition filed by the appellant herein was dismissed. Aggrieved, the petitioner has filed the present appeal.

We have heard the learned Counsel for the parties and perused the record of this appeal.

Briefly stated facts of the present case are that the appellant/petitioner is a dealer registered under WBGST Act/CGST Act, 2017 engaged in works contract. For the financial year 2021-22, a

show cause notice dated 01.09.2022 under Section 74 of the WBGST/CGST Act was issued by the proper officer to the petitioner requiring him to appear for personal hearing either in person or through authorized representative on the date, time and venue mentioned in the table attached to the notice. Perusal of the table shows that in the aforesaid show cause notice the proper officer, i.e., the Assistant Commissioner, Jalpaiguri, West Bengal has specifically **not mentioned the date, time and venue of personal hearing.** The aforesaid notice was followed by an order dated 9.12.2022 under Section 74 of the WBGST/CGST Act, 2017 creating liability of WBGST,CGST and penalty totaling Rs.14,64,673.60/-.

The facts as aforementioned could not be disputed by learned State Advocate that an opportunity of hearing as contemplated under Section 75(4) of the WBGST/CGST Act was not afforded by the proper officer to the appellant/petitioner before passing the impugned adjudication order/assessment order for the financial year 2021-22 dated 9.12.2022 under Section 74 of the Act. Thus, non-compliance of statutory mandate under Section 75(4) of the

WBGST/CGST Act has been admitted by the State respondents.

On similar set of facts an appeal being MAT/205/2023 has been allowed by us today by a separate judgment in which we have held that an opportunity of hearing as contemplated under Section 75(4) of the WBGST/CGST Act is the statutory mandate and in absence of compliance of the statutory mandate, the order passed by the proper officer under Section 73 of the WBGST/CGST Act, cannot be sustained. Respectfully following the judgment passed in the aforesaid case, this appeal also deserves to be allowed.

For all the reasons aforesated, the impugned judgment dated 18.11.2023 in WPA/1864/2023 (Piku Saha –Vs.- The State of West Bengal & Ors.) passed by the learned Single Judge cannot be sustained and is hereby set aside. The impugned order dated 9.12.2022 under Section 74 of the WBGST/CGST Act for the financial year 2021-22 passed by the proper officer/Assistant Commissioner, Jalpaiguri, West Bengal, cannot be sustained on account of non-compliance of statutory mandate of Section 75(4) of the WBGST/CGST Act, 2017 and is consequently hereby quashed.

The appeal and the writ petition are allowed. Matter is remitted back to the concerned Assistant Commissioner with a direction to pass an order afresh in accordance with law, after affording reasonable opportunity of hearing to the appellant/petitioner. The appellant/petitioner is permitted to submit reply to the show cause notice within three weeks from today before the concerned proper officer/Assistant Commissioner, along with a certified copy of this order.

(Surya Prakash Kesarwani, J.)

(Rai Chattopadhyay, J.)