

03.07.2025

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Ct.No.7
sdas

WPA 228 of 2024

Chandra Sekhar Singh
Vs.
Union of India & Ors.

Mr. Kalyan Kumar Chakraborty
Mr. Kashinath Bhattacharya
Mr. Gopal Krishna Sarkar
.....for the petitioner

Mr. Tilak Mitra
Mr. Prithu Dudhoria
..... for the Union of India

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
..... for the CGST Authority

The present writ petition has been instituted by the petitioner seeking issuance of a writ of certiorari for quashing and setting aside the ex parte order dated 21st January, 2022, passed by the Assistant Commissioner, Central Tax, Shibpur Division, Howrah, functioning under the jurisdiction of the CGST and Central Excise Commissionerate, Howrah.

By the order dated 21.01.2022, a demand for service tax amounting to Rs. 3,85,041/-, along with accrued interest, was raised against the petitioner under the provisions of section 73(1) of the Finance Act, 1994, and section 174 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act).

Furthermore, the said order also imposes a penalty of an equivalent amount, i.e., Rs. 3,85,041/-, upon the petitioner by invoking the provisions of section 78 of the Finance Act, 1994, read with section 174 of the CGST Act, for violation of the provisions of section 68 of the Indian Evidence Act, 1872, and rule 6 of the Service Tax Rules, 1994, as well as on account of alleged non-payment of service tax.

Mr. Chakraborty, learned Advocate appearing on behalf of the petitioner, submits that by the impugned *ex parte* order dated 21st January, 2022, the petitioner has been directed to pay service tax amounting to Rs. 3,85,041/-, along with applicable interest, and a penalty of an equivalent sum, i.e., Rs. 3,85,041/-. He submits that an appropriate direction may kindly be issued to treat the order dated 21st January, 2022 as a show cause notice, and to afford the petitioner an adequate opportunity of hearing before the adjudicating authority. It is further submitted that the adjudicating authority may also be directed to pass a reasoned and speaking order upon granting such opportunity and after considering the submissions that may be made by the petitioner.

He cites an unreported decision by the Hon'ble Division Bench headed by the Hon'ble the Chief Justice in MAT 2387 of 2023 and contends that in similar situation, the Hon'ble Division Bench passed an order to treat the

order as show cause notice and then to take next follow up action after affording an opportunity of hearing.

Mr. Banerjee, learned Advocate representing the CGST Authority, vehemently opposes the contention advanced by Mr. Chakraborty.

Mr. Banerjee, draws my attention to the relevant portion of the adjudication order dated 21st January, 2022, and contends that sufficient opportunity was provided to the petitioner to appear before the adjudicating authority. However, despite receipt of notice from the adjudicating authority, the petitioner failed to appear. Finding no other alternative, the adjudicating authority was compelled to pass the ex-parte order.

He further submits that the said order was passed as far back as in 2022 and is an appealable one. The prescribed period of limitation for preferring an appeal is sixty days, with a further condonable period of thirty days. However, the petitioner did not take any steps to prefer such an appeal. After waiting for almost two years, the petitioner has filed this writ petition in 2024, seeking an order to treat the said order as a show cause notice. He asserts that such a prayer cannot be accepted. In support of his contention, he relies on a decision reported in *2020 (36) G.S.T.L. 305 (S.C.) [Asstt. Commr. (CT), LTU, Kakinada vs. Glaxo Smith Kline Consumer Health Care Ltd.]*, which lays down that once the statutory period for

preferring an appeal has expired, a writ petition should not be entertained.

Heard the learned Advocates for the respective parties and perused the materials on record.

The order impugned in the present writ petition reflects that letters fixing dates for personal hearing were duly sent to the registered address of the petitioner, scheduling hearings on 9th December, 2021, 23rd December, 2021, and 19th January, 2022, thereby calling upon the petitioner to appear before the adjudicating authority. However, despite receipt of such letters and/or notices, the petitioner failed to appear on the scheduled dates. As a consequence, and in view of the petitioner's continued absence, the adjudicating authority proceeded to pass an *ex parte* order dated 21st January, 2022.

I have been informed that order dated 21.01.2022 is appealable order. Therefore, admittedly, there exists an efficacious alternative remedy.

Mr. Chakraborty, has pointed out that the said order was passed during the Covid-19 pandemic. Nonetheless, it appears that the petitioner was not vigilant in prosecuting the matter.

In view thereof, I am of the view that no interference is called for in this writ petition. Accordingly, the writ petition is dismissed. There shall be no order as to the costs.

However, this order shall not preclude the petitioner in preferring the appeal before the appropriate authority in accordance with law.

It is clarified that the petitioner shall be at liberty to raise the issue of pendency of this writ petition to justify the delay in preferring the appeal.

(Partha Sarathi Chatterjee, J.)