04.07.2025
Sl No.4
Court No.236
(gc)

WPA 504 of 2022

Hotel Rudra & Anr.
Vs.
Deputy Commissioner, State Tax & Ors.

Mr. Souradeep Majumdar
...for the Petitioners.

Mr. Anirban Ray, Ld. G.P.,
Mr. Md. T.M. Siddiqui, Ld. A.G.P.
Mr. Tanoy Chakraborty,,
Mr. Saptak Sanyal
..for the State.

1. The instant writ petition has been filed challenging the order dated 28.09.2021 passed by the Joint Commissioner, State Tax, Baharampur Circle.

2. The writ petitioner no.1 is a partnership firm carrying business under the trade name of M/s. Hotel Rudra, and is duly registered with the GST Authority under the West Bengal Goods & Services Tax Act, 2017. The issue involved in the instant case pertains to enhancement of taxable turnover from Rs.3,71,628/- (Rs.93,61,030-Rs.89,89,402) to Rs.60,80,738/- during the period 2018-19 segregating the enhanced turnover under several heads namely Food of Rs.25,23,805/- Hukka of Rs.11,87,435/- and Banquet of Rs.8,69,498/- whereas the petitioners have

only room rent service of Rs.3,71,628/- on which tax is payable.

3. The inspection, search and seizure for the period from 2017-18 to 2019-20 was initiated by the respondent no.1. During the pendency of such proceeding and intimation in Form GST DRC-01A vide Memo No.792/BI-SB dated 18.09.2020 were issued wherein a difference in turnover in GST returns and the seized documents were pointed out as a result of which the turnover for the relevant period of 2018-19 was determined at Rs.45,80,738/- and was subjected to tax @ 5%, 18% and 28% on the alleged supply of food, hukka and banquet service respectively.

4. Subsequently, the respondent no.1 issued a show-cause notice on 07.10.2020 in Form GST DRC-01 wherein a turnover being different from the earlier GST DRC-01A was determined at Rs.60,80,738/- assessing the tax liability to the tune of Rs.6,90,181.70 with penalty of equal sum together with interest of interest of Rs.3,00,853/- being the total demand of Rs.18,98,780/-.

5. Against the final order dated 15.12.2020, the writ petitioners filed an appeal before the appellate authority being the respondent No.2 herein, who disposed of the matter ex parte by

an Order dated 28.09.2021 which is the subject matter of challenge in the instant case.

6. The petitioner submits that the matter be remanded back to the concerned authority for proper adjudication since the matter was disposed of ex parte.

7. Per contra, the Learned Counsel for the respondents strenuously argued that the petitioners were already given ample opportunities to appear before the authority concerned but they remained absent and also failed and or neglected to submit any kind of communication to the Department concerned for explaining the reasons for such non-appearance.

8. Having heard the parties and upon considering the materials available on record, I am of the view that since the matter has been disposed of ex parte without considering the merits of the case, and for the sake of interest of justice and equity the matter should be remanded back to the authority concerned for proper adjudication of the same. The principles of natural justice warrants that a party should have a fair opportunity to present his or her case. Hence, the respondent No. 2 is directed to fix a date of hearing peremptorily upon service of notice of hearing to the petitioner and pass a reasoned

order after affording an opportunity of hearing within a period of 8 weeks from the date of communication of the said order. The order shall be communicated accordingly in the approved/prescribed portal mentioned in the statute. It is made clear that the petitioner shall appear on the date fixed for hearing failing which the matter shall be heard ex parte and no further adjournment shall be granted to the petitioner. The entire exercise is to be completed within the stipulated period framed above.

9. Accordingly, the writ petition is disposed of.

10. However, there shall be no order as to costs.

11. Urgent Photostat certified copy of this order if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Smita Das De, J.)