Form No. J.(2)
Item No. 04

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 11.02.2025

DELIVERED ON: 11.02.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 110 of 2025
With
I.A. No. CAN 1 of 2025

Eastland Switchgears Pvt. Ltd. & Anr.
Vs.
The Assistant Commissioner of
Revenue, Colootola and Ezra Street
Charge, WBGST & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan ....for the appellants

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddique, Sr. Adv.
Mr. Tanoy Chakraborty
Mr. S. Sanyal ....for the respondents

<u>JUDGMENT</u>

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated January 15, 2025 in W.P.A. 28834 of 2024. In the said writ petition, the appellants had challenged a show-cause notice issued under Section 73 of the CGST Act dated November 19, 2024.

2. The learned Single Bench was of the view that the appellants should submit to the jurisdiction, furnish their reply and participate in the adjudication process. Aggrieved by the same, the appellants are before us by way of this appeal.

3. We have elaborately heard Mr. Ankit Kanodia, learned advocate for the appellants and Mr. T.M. Siddique, learned Senior advocate appearing for the respondents.

4. The matter has had a chequered history commencing from issuance of a discrepancy memo dated September 20, 2024 for the period April 1, 2020 to March 31, 2021. In terms of the scheme of the Act, the appellants/assessee are entitled to submit their reply to the discrepancy memo, which was submitted by the assesee on September 30, 2024. Thereafter, a final audit report is drawn dated October 4, 2024 under section 65(6) of the CGST Act. Though the statutory Form in GST ADT-02, in terms of rule 101(5) of the CGST Rules do not specifically state that a reply can be filed to the final audit report, such opportunity was granted to the assessee and the assessee filed their reply dated October 21, 2024. The receipt of such reply has been acknowledged by the adjudicating authority in the show-cause notice issued under section 73 of the Act, as could be seen from the show-cause notice.

5. On a reading of the relevant portion of the show-cause notice, which is confined only to one issue i.e. mismatch between GSTR 9 and GSTR 1, one gets an impression as if the authority has considered the reply given by the assessee to the final audit report and thereafter has drawn the show-cause notice. However, on a closer reading, it is seen that the adjudicating

authority has extracted the reply given and in a single line stated that *"The decision by the undersigned on the above discrepancy stands and hence the liability remains as:"* What is required to be seen is whether this would tantamount to a proper show-cause notice.

6. It is settled legal proposition that a show-cause notice should be specific as to the role of the assessee and as to what passes in the mind of the adjudicating authority, which, in its *prima facie* view is against the assessee. If the show-cause notice does not satisfy these conditions, the notice will be termed as 'unspecific' and 'vague' thereby denying opportunity to the assessee to put forth an effective reply.

7. When we examined the scheme of the Act, we find that sub-section (6) of Section 65 states that on conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

8. Thus, the assessee before us have admittedly given a reply to the discrepancy memo, where as many as 12 issues and the reply given for 11 issues was accepted and the final audit report is confined to only 1 issue.

9. The adjudicating authority also granted one opportunity to the assessee to file a reply to the final audit report, which the assessee has complied with. Therefore, it will be incumbent upon the adjudicating authority, while issuing show-cause notice to record reasons for its finding. Undoubtedly, this will be a *prima facie* finding. However, in the instant case, the adjudicating authority, though referred to the reply submitted by the

assessee dated October 21, 2024 to the final audit report drawn under section 65(6) in GST ADT-02, the same has not been dealt with.

10. Therefore, we are of the view that the assessee is put in a disadvantageous position in not being able to give an appropriate reply since the adjudicating authority has not disclosed its *prima facie* view qua the reply submitted by the assessee to the final audit report. Therefore, we are inclined to interfere with the show-cause notice, which is impugned in the writ petition only to that extent and remand the matter to the adjudicating authority to issue a fresh show-cause notice recording reasons as to why in his/her *prima facie* view, the reply dated October 21, 2024 or the other documents, which are enclosed in the reply or which were submitted earlier, are not to the satisfaction of the adjudicating authority.

11. Upon issuing such revised show-cause notice, the assessee shall be given reasonable time to submit their reply and thereafter the show-cause notice shall be adjudicated in accordance with law.

12. With the above observations/direction, the appeal and the connected application are disposed of.

13. No costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)