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10.02.2025

WPA 2531 of 2025

LGW Industries Limited
Vs.
Assistant Commissioner of Revenue,
State Tax & Ors.

Mr. Vinay Shraff
Mr. Dev Agarwal
Mr. Rahul Parasrampuria
… … for the petitioner
Mr. A. Ray
Md. T.M. Siddiqi
Mr. T. Chakraborty
Mr. D. Shaw
Mr. S. Sanyal
… … for the State

Learned counsel appearing for the petitioner submits that a show cause notice has been issued to the petitioner and on the basis of the said show cause notice an adjudication order was passed on 19.07.2024.

Learned counsel challenges the adjudication order on the following three grounds :-

(i) That the adjudication order was passed without giving an opportunity of hearing.

(ii) That the adjudication order was passed without granting opportunity to file written notes of reply by the petitioner.

(iii) That the petitioner prayed for cross-examination, to those whose statements have been relied upon while passing the adjudication order.

Learned counsel further prays for quashing of the adjudication order passed on 19.07.2024 for the financial year 2018-19.

Learned counsel appearing for the respondent authorities relies upon the adjudication order which reads as follows :

"**Evaluation of the Reply to the issued show cause notice by the RTP for the period APRIL, 2018 TO MARCH 2019**

As per the provision of Section 74[1] of WBGST Act, 2017, a show cause notice in FORM GST DRC 01 vides reference no. ZD190424020191T dated: 12-04-2024 for the period April, 2018 to March, 2019 allowing the chance to show cause why the RTP should not pay tax as ascertained after deducting the amount already paid voluntarily for the said period by 29:04 2024 But on 25-04-2024 a reply was received from the RTP with the request to extend the date of hearing for a month because their learned advocate would be busy in attending the audit of accounts. Accepting the prayer the date of submission of reply was adjourned to.

In its reply dated 23-04-2024 without contending the issues/observations mentioned in the issued show cause notice the RTP only highlighted the point of allowing the scope of Cross verifications for effectively defend themselves against the persons and submit reply to the intimation of DRC 01

It has been mentioned by the RTP in its reply that as an essential element of natural justice the scope of cross examination of the following witnesses, whose statements have been relied upon to support the allegation, should have been provided:

i)Sri Tapan Kr. Deb (Partner of Arrow Roadlines)

ii)Sri Haradhan Debnath (Proprietor of M/s Aerocom Trade Exim)

iii)Smt. Anjali Sarkar (Owner of Virika Marketing Pvt. Ltd)

iv)Sri. Ganesh Prasad Das (Director of Virika Marketing Pvt. Ltd.)

v) Sri Nipu Roy (Beneficial owner of the c/a and authorised signatory of Virika Marketing Pvt Ltd)

vi) Sri Gopal Kumar Pandey (claimed to be the Director/Partner on record of Rajshree Vaniva Udyog, Impex (India) Udyog, Daania Trading Private Limited, Swarnabarsa Vinimay Private Limited, Royal Infra Services, Sonartari Vinimay Pvt. Ltd. and Virika Marketing Pvt. Ltd but works as a staff of Sai Roadways)

vii) Sri Gopal Singh (claimed to be Director/Partner of Swarnabarsa Vinimay Private Limited but works at Ajanta Pvt. Ltd.)

viii) Sri Surendra Sharma (associate of Ashok Kr. Agarwal)

ix) Sri Ashok Kr. Agarwal (controller of Virika Marketing Pvt. Ltd, Aerocom Trade Exim. Swarnabarsa Vinimay Private Limited and Grant Trade Merchants)

x) Sri Biswajit Patra (Proprietor of Blue Bell Enterprise)

Contention of the reply of the RTP i.e. the right to cross examine the witness as a scope of natural justice is considered below:

A joint hearing was conducted in presence of Sri Tapan Kr. Deb, the partner of Arrow Roadlines and Sudhamoy Dutta partner of Dutta Roadways in presence of the authorised representatives. The RTP submitted the consignment notes of only transporter Le. "Arrow Roadlines" in support of the exports of the goods by the RTP During hearing both of them produced some documentary evidences in support of their statements.

Hence the issue of cross examination is not applicable here.

Smt. Anjali Sarker was not the Owner of Virika Marketing Pvt. Ltd but the landlady of the principal place of business of Virika Marketing Pvt. Ltd and Smt. Sarkar denied that she or any person of her family never entered into any agreements with the directors of Virika Marketing Pvt. Ltd.

The statements of the following proprietors/Proprietress such as Sri Haradhan Debnath (Proprietor of M/s Acrocom Trade Exim), Sri. Ganesh Prasad Das (Director of Virika Marketing Pvt. Ltd.); Sri Gopal Kumar Pandey (claimed to be the Director/Partner on record of Swarnabarsa Vinimay Private Limited, and Virika Marketing Pvt. Ltd), Sri Gopal Singh (claimed to be Director/Partner of Swarnabarsa Vinimay Private Limited but works at Ajanta Pvt. Ltd.), were recorded against the issued Summons U/s 70 of WBGST Act, 2017 to verify their actual involvements with the claimed suppliers of the RTP. The statements were not the only the resort to ascertain the wilful mistake of the RTP to avail ITC from such purported suppliers. Their ignorance of the claimed business activities are also reflected in the contrary evidence of control over the monetary transactions retrieved from different banks

The statements of Sri Biswajit Patra (Proprietor of Blue Bell Enterprise) were recorded against issued Summons U/s 70 of WBGST Act, 2017. His statement of ignorance and non involvement with the business and the bank account where the payments of the RTP were received have been corroborated from the documents retrieved from the respective bank

Sri Ashok Kr. Agarwal also stated the same modus operandi as a controller or operator of different fabricated business entities before the DGGI, Kolkata and was put int0 jail custody

Moreover the claim of the demand for cross examination of the witnesses as a scope of natural justice can be rejected on the basis of the judicial pronouncement of Hon'ble Supreme Court of India in a similar case of Customs authority. In its judgement Hon'bie Supreme Court of India in Kanungo & Company vs Collector Of Customs And Ors. on 7 February, 1972 case decided that "We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the shote cause notice issued on August 21, 1961, all the material on which the Customs Authorities hue relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant"

Similarly the RTP was provided intimation of the observations or findings during personal hearing or through communication on different dates before the issuance of show cause notice. But the RTP failed to provide any corroborative evidence contrary to the findings intimated to them.”

Heard learned counsel appearing for the parties.

An order passed under Section 74 of the GST Act is appealable under Section 107A of the said Act. The above Section categorically states that there is a statutory mechanism for redressal enabling the aggrieved party to challenge the reassessment order before an appropriate appellate authority. This Court underlines that this statutory provision ensures that the petitioner has a clear and adequate remedy available for his grievance.

This Court further holds that when a specific remedy is available, it is a well settled principle of law that the High Court's writ jurisdiction cannot be ordinarily invoked unless under exceptional circumstances. In the present case, as the petitioner could not demonstrate any exceptional circumstances and has adequate relief by way of preferring an appeal under Section 107 of the GST Act and there arises no need for judicial intervention through a writ petition at this stage.

Accordingly, the writ petition being WPA 2531 of 2025 is disposed of. However, this Court clarifies that this dismissal does not prejudice the rights of the petitioner to avail the appellate remedy as provided by law.

However, I make it clear that as the writ petition was filed by the petitioner on 30.01.2025 the appellate authority should allow the writ petitioner to file his appeal within 30 days from date and in accordance with law.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)