16.06.2025
Item No
A 35

Saswata

WPA 3186 of 2025

Naina Gupta
Versus
The Assistant Commissioner of State Tax, Chadni Chawk & Princep Street Charge & Ors.

Mr. Sandip Choraria
Mr. Akash Chakraborty
Mr. Rishav Manna

…For the petitioner

Mr. Anirban Ray, Ld GP
Mr. Md. T.M. Siddiqui, AGP
Mr. Saptak Sanyal
Mr. Debraj Sahu

…For the CGST

Mr. Debasish Chowdhury
Mr. Prithu Dudharia

…For the Union of India

1. Challenging the order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act") dated 2nd December 2023 for the Tax period from April 2020 to August 2020, the present writ petition has been filed.

2. Mr. Choraria, learned advocate appearing for the petitioner by drawing attention of this Court to the show cause notice issued in Form GST DRC – 01 dated 25th April 2024 submits that at the time when the aforesaid show cause was issued, the proper officer had already made up his mind. According to him, the above would corroborate from the fact that the proper officer not only afforded the petitioner with an opportunity to submit its reply to the show cause but simultaneously with the affording of the opportunity to respond had afforded the petitioner opportunity of personal hearing.

3. By placing reliance on the provision of Section 75(4) of the said Act he submits that an opportunity of hearing is ordinarily provided either when it is requested in writing or where any adverse decision is contemplated against a taxable person. Since, the proper officer had contemplated passing adverse order against the petitioner, the aforesaid opportunity of hearing has been provided. The above presupposes that the proper officer had already made up its mind to pass an adverse order against the petitioner.

4. In support of his contention that an oopportunity of hearing ordinarily ought to be provided only upon receipt of the

reply and not prior thereto, he has relied on an unreported judgment of the Hon'ble High Court of Chattisgarh, Bilaspur in **WA no. 172 of 2024** delivered in the case of ***Mahindra & Mahindra Limited versus Union of India & Ors.*** on 10th April, 2024.

5. This apart he submits that the notice and the aforesaid order were uploaded in "*additional notices and orders"* section of the portal and having regard thereto, the petitioner missed the opportunity to appropriately respond to the same.

6. Having heard the learned advocates appearing for the respective parties, I find prima facie that the petitioner had been served with a notice in Form GST DRC – 01A dated 19th December 2023 prior to issuance of the show cause. Subsequently, a show cause was issued on 25th April 2024 and later an order under Section 73(1) of the said Act has been passed on 2nd December 2024.

7. I find in paragraph 6 of the writ petition, the petitioner has stated that in the first week of January 2025 upon the change of accountant of the petitioner, the petitioner had been able to ascertain and was handed over the aforesaid notices and order of the proceeding and had no notice prior thereto. It is, however not the case of the petitioner that since December 2023 the petitioner did not operate the portal or did not file any returns. The order in the instant case was not passed overnight. Admittedly, the order was preceded not only by the show cause but also by a pre show-cause notice and as such, it is very difficult to accept the contention of the petitioner that the petitioner was unaware with regard to the aforesaid proceeding and only became aware thereof, upon the new accountant taking charge in the first week of January 2025.

8. Be that as it may, the petitioner has raised legal issue as regards the proper officer affording opportunity of hearing simultaneously with the show cause constitutes a predetermined

mind. The petitioner insists that in ordinary course before an opportunity of personal hearing is given pursuant to the show cause, the authority is required to await the reply and only then an opportunity of hearing is required to be afforded **provided** the proper officer is not satisfied with the reply. In this context, the petitioner has relied on Section 75(4) of the said Act. To morefully appreciate, the same is extracted hereinbelow:

> *"**Section 75(4)** An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."*

9. This apart the petitioner has also, by placing reliance on an unreported judgment of the Hon'ble High Court of Chhattisgarh in the case of ***Mahindra & Mahindra Limited (supra)*** has attempted to justify that the authority without awaiting reply, ought not to have issued the notice of personal hearing, I find in the instant case the proper officer had duly afforded the petitioner with an opportunity to respond to the show cause well before the opportunity of personal hearing was afforded. In my view simply because the proper officer in the show-cause had notified the petitioner with the date for opportunity of personal hearing prior to receipt of the reply, the same does not and cannot render the aforesaid show cause bad, nor can it be concluded that the proper officer had made up his mind in the matter.

10. Having regard to the provision of Section 75(4) of the said Act it is apparent that the said provision provides that an opportunity of hearing shall be granted where a request is received from the person chargeable with tax or where any adverse decision is contemplated against such person. The word "contemplate" has not been defined in the said Act. Having regard thereto reliance is placed on the dictionary meaning of the word "contemplate" as available in the Black's Law Dictionary. As per the Black's Law Dictionary the word "contemplate" means "*To*

view or consider with continued attention; to regard thoughtfully; to have in view as contingent or probable as an end or intention. The same under no circumstances can mean or include that the proper officer had made up its mind to pass an adverse order against the petitioner. Further the judgment delivered in the case of ***Mahindra & Mahindra Limited (supra)*** also does not assist the petitioner. In the said case the personal hearing was afforded prior to the date of furnishing the response. Such is not the case here. As such I am of the view that there is no irregularity on the part of the proper officer in providing the petitioner with an opportunity of hearing by notifying the same to the petitioner while issuing the show cause especially, when the opportunity of hearing was afforded subsequent to the date of furnishing of the response to the show cause.

11. Admittedly in this case, the petitioner did not avail such opportunity and did not appear before the authority. Having not done so, the petitioner is not entitled to question the same.

12. Having regard to the observations made hereinabove, I am of the view that no interference to the order is called for in exercise of extraordinary writ jurisdiction of this Court. However, having regard to the fact that the scheme of the said Act provides for multi tiered adjudicating process, especially since the Appellate Tribunal is yet to be constituted, I am of the view that the petitioner should not be rendered remediless. In the event, the petitioner prefers an appeal from the order impugned before the appellate authority within a period of four weeks from date, the appellate authority shall, having regard to the observations made hereinabove, hear out the appeal subject to compliance of other statutory formalities by the petitioner.

13. With the above observations and direction, the writ petition is disposed of.

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

(Raja Basu Chowdhury, J.)