26.08.2025
Item No.03
Ct. No. 1
**RP**

**MAT 223 of 2025**
**+**
**IA No.CAN 1 of 2025, CAN 2 of 2025**

**Sarabindu Chatterjee**
**Vs.**
**Assistant Commissioner of Revenue, State Tax, Serampore Charge & Ors.**

Mr. Sandip Choraria
Mr. Somnath Roychowdhury
Ms. Sanjana Jha
Mr. Akash Chakraborty
....For Appellant
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
....For State

1. The appellant is the unsuccessful writ petitioner. Having failed in challenging the order passed under Section 73 of CGST/WBGST Act 2017 and directing the appellant to pay the tax along with interest and penalty, the learned Single Bench noted that roughly 10% of the disputed tax has already been recovered from the appellant and that an alternative remedy is available under the Act and relegated the appellant to avail the statutory appellate remedy with further direction to the respondent authority to give credit to the amount which was recovered from the appellant in lieu of pre-deposit.

2. After elaborately hearing the learned advocate for the appellant and the learned government counsel we find that the adjudication order dated 5th December, 2023 has been passed without granting an opportunity of personal hearing to the appellant. It is no doubt true that the appellant did not reply to the discrepancy notice nor submitted any reply to the show cause notice nor there was any written representation made by the appellant to afford an opportunity of personal hearing. However, Sub-Section 4 of Section 75 of the Act states that where any adverse decision is contemplated against a person chargeable with tax and penalty, an opportunity of personal hearing shall be granted. Thus, even without a written request, if any order adverse to the interest of the taxpayer is passed, an opportunity of personal hearing has to be afforded.

3. Considering the peculiar facts and circumstances of the case and the fact that since already roughly 10% of the disputed tax has been recovered by the department, the interest of the department stands protected to the said extent and the matter can be set back to the Adjudicating Authority, namely, Assistant Commissioner of Revenue, State Tax, Serampore Charge, Government of West Bengal for

a fresh decision. Accordingly, the appeal and the connected applications are disposed of by directing the appellant to treat the order of adjudication dated 5th December, 2023 as show cause notice and submit his reply within two weeks from the date of receipt of the server copy of this order along with all documents and details which he proposes to rely upon and on receipt of such reply the Adjudicating Authority shall fix a date of personal hearing on which date the appellant himself or his authorized representative shall appear and put forth his submission and documents, if any, and after which a fresh order of adjudication be passed on merit and in accordance with law.

4. We make it clear that the appellant will not be entitled to raise the plea that the de novo assessment, which has been directed to be done, is time barred since the matter has been remanded by the Court for fresh decision.

5. Urgent Photostat copy of this order, if applied for by the learned advocates for the parties, be delivered to the learned advocates for the parties, upon compliance of all formalities.

**[T.S. SIVAGNANAM]**
**CHIEF JUSTICE**

**[CHAITALI CHATTERJEE (DAS), J.]**