23.06.2025
sayandeep
Sl. No. 53
ML
Ct. No. 05

WPA 3877 of 2025

Eminent Logistics
Vs.
The Assistant Commissioner of State Tax, Ballygunge Charge & Ors.

Mr. Avra Mazumder
Ms. Alisha Das
Mr. Suman Bhowmik
Mr. Samrat Das
Ms. Elina Dey
.... for the petitioner

Mr. Anirban Ray, Ld. GP
Mr. T.M. Siddiqui, Sr. Advocate
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal
..... for the State

1. The present writ petition has been filed, *inter alia*, challenging the final order issued under Section 73 of the WBGST/CGST Act, 2017(hereinafter referred to as the said Act) for the tax period of April, 2022 to March, 2023.

2. Mr. Mazumder, learned advocate representing the petitioner by drawing attention of this Court to the show-cause notice issued in form GSTDRC 01 dated 28th May, 2024 would submit that the said notice is conspicuously silent about the date for providing personal hearing. He would submit that although, there is no dispute with regard to the receipt of the show-cause notice, however having regard to the right of the petitioner to be entitled to a personal hearing in consonance with the provisions of Section 75(4) of the said Act, the aforesaid order cannot be sustained and should be set aside. In support of his contention he has placed reliance on a judgment delivered by this Court on 19th May, 2025 in the case of ***Greentech IT City (P) Ltd. v. State of West Bengal,*** reported in **[2005]174 taxman.com 1048 (Calcutta).**

3. Mr. Chakraborty, learned advocate appears on behalf of the respondents. He would at the very outset submit that in this case repeated opportunity was given to the petitioner to file response. The petitioner choose not to avail of such opportunity. However, he does not dispute the fact that in the instant case, no opportunity of personal hearing was afforded to the petitioner.

4. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that in the instant case, a show-cause notice was duly served on the petitioner. The petitioner however did not avail the opportunity to file any response. However, it is the mandate of Section 75(4) of the said Act which, *inter alia,* makes it obligatory for the proper officer before passing any order under Section 73 or Section 74 of the said Act to afford an opportunity of hearing if, a request is made by a notice in writing for a personal hearing or if, an adverse decision is contemplated against the tax payer. It is true that in the instant case no request was made in writing by the petitioner

for personal hearing, however, considering the show cause and the fact that the an adverse order was contemplated against the petitioner, I am of the view that the proper officer ought to have given the petitioner an opportunity of hearing prior to disposal of the proceeding under Section 73 of the said Act.

5. Having regard thereto, I am inclined to set aside the order passed by the proper officer dated 28th May, 2025 and to remand the matter back to the proper officer for a decision on merit. The proper officer is directed to dispose of the proceeding by providing an opportunity of hearing to the petitioner. Since the petitioner has not file any response despite being repeatedly being called on, no further opportunity be made available to the petitioner to file any further response by the proper officer while deciding the matter afresh. He shall however be obliged to afford a personal hearing to the petitioner and in course of such opportunity, if any documents are placed he shall consider the same.

6. With above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)