Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 4165 of 2025

M/s. Jet Roadways & Anr.
versus
Union of India & Ors.

For the petitioners	:	Mr. N.K. Chowdhury, Mr. Nilotpal Chowdhury.
For the respondents	:	Mr. Vipul Kundalia, Sr. Adv., Mr. Kasutav Kanti Maiti, Mr. Anindya Kanan.
For the Union of India	:	Mr. Ashis Mukherjee, Mr. Amit Sharma, Mr. Abhishek Kr. Agrahari.
Heard on	:	27.10.2025.
Judgment on	**:**	**27.10.2025**

Raja Basu Chowdhury, J (Oral):

1. Challenging the order in original dated 16th July, 2024, passed by the Commissioner, CGST & CX, Kolkata South Commissionerate, the instant writ petition has been filed. The petitioners seek to challenge the order primarily on the following three grounds, which are noted hereunder;

(a) Violation of principles of natural justice as according to the petitioners no proper opportunity of personal hearing was given to the petitioners by the Proper Officer,

(b) The Adjudicating Authority/Proper Officer who had heard the case did not have the competence to do so since, the show-cause was issued by an authority, different from the authority who had heard and passed the order,

(c) The order passed more than a month from the date of conclusion of personal hearing, being in conflict with the circular issued by the Central Board of Excise & Customs dated 10th March, 2017, stood vitiated.

2. To appropriately appreciate the above contentions, it is necessary to note down the facts giving rise to the instant writ petition.

3. The petitioners are engaged in the business of providing services as clearing and forwarding agents. In course of its business the petitioners were issued with the show-cause-cum-demand notice under the provisions of Section 73(1) of the Finance Act, 1994 dated 12th October, 2018. Such show-cause was issued by the Commissioner, Central Tax, Kolkata North, CGST & CX. The petitioners duly responded to the said show-cause notice on 5th November, 2018. Further response was filed on 19th February, 2019. Again an additional response was filed which was received by the department on 27th April, 2021. Following the above, the personal hearing had to be re-fixed as in the interregnum, since the incumbent to the

post of Commissioner, CGST & Central Excise, Kolkata North Commissionerate had been transferred to Haldia Commissionerate, the matter had been re-assigned before him and accordingly consequent upon his re-assignment, by a fresh notice a further opportunity of personal hearing was offered on 21st March, 2023. Still later, at the instance of the petitioners once again further opportunities of hearing were offered on 5th September, 2023, on 19th September, 2023 and on 17th October, 2023. Following the above, the order impugned dated 16th July, 2024 was passed.

4. Mr. Chowdhury, learned senior counsel representing the petitioners by drawing the attention of this Court to the order impugned has contended though an opportunity of hearing was offered to the petitioners and though the petitioners' representative had appeared before the Adjudicating Authority/Proper Officer on 17th October, 2023 as would appear from the impugned order, however, on such date no hearing took place as the officer concerned was not present. Subsequently, without offering further opportunity of hearing, the proceeding was concluded and the final order passed.

5. Mr. Chowdhury, learned advocate for the petitioners, has, however, been candid enough in submitting that there is no contemporaneous letter/document to substantiate the above. He would submit that the above failure to provide opportunity of hearing on 17th October, 2023 constitutes denial of the principles of natural justice. Independent of the above, it has been contended

that once a show-cause notice was issued by the North Commissionerate Kolkata, it was ordinarily incumbent upon the authority to have the proceedings either concluded by the same authority, or if the same was not possible consequent upon his transfer, having regard to the circular dated 10th March, 2017, to have the same decided by his successor in office. The same had not been done in this case. Instead, the matter was heard by Haldia Commissionerate and ultimately the matter was disposed of on further re-assignment to Commissioner, Kolkata, South Commissionerate. In response to a query from the Court, Mr. Chowdhury, has been candid enough in submitting that the above issue had never been raised by the petitioners before the Adjudicating Authority.

6. Lastly, on the issue of the order being passed beyond the period of one month from the date of personal hearing, reliance has been placed on paragraphs 14.10 & 16 of the circular dated 10th March, 2017.

7. Mr. Chowdhury submits that the order ought to have been passed within one month from the date of personal hearing. While relying on the above circulars he submits since the order has been passed belatedly, such an order cannot be sustained. In support of the above reliance has been placed on the following three judgments;

(a) ***Innovative Security Solutions v. Commissioner of GST & C. Ex., Chennai*** reported in **2019 (31) G.S.T.L. 18 (Mad.)**,

(b) ***LMB Sons v. Union of India*** reported in **(2023) 11 Centax 271 (Jhar.)**,

(c) ***Shantilal Jain v. Union of India*** reported in **2010 (252) E.L.T. 326 (Bom.)**.

8. He has also relied on the instructions issued by the Central Board of Indirect Taxes and Customs dated 18th November, 2021.

9. Mr. Kundalia, learned senior advocate appears on behalf of the respondents and submits that admittedly, in this case though the show-cause was issued by a particular authority, the final hearing, had been conducted by a different authority, however, to clarify he has stated that the incumbent to the post of show-cause issuing authority, who had initially heard the response to the show-cause on his transfer was re-assigned the case. It is the said gentleman who had passed the order. The same is in consonance with the circular dated 10th March, 2017.

10. According to him, the petitioners were given repeated opportunity of hearing. The petitioners' representative had also appeared. The statement made by the petitioners that no hearing took place on 17th October, 2017 is contrary to the records and is not supported by any material evidence. No reliance be placed on the same. On the issue of the order being passed beyond one month from the date of personal hearing, he submits that the paragraph 14.10 of the

circular dated 10th March, 2017 only provides that an endeavour should be made to pass such order within one month. However, if the order cannot be passed within such period, the same does not render the order bad as the circular itself provides that the order can be passed beyond such period. In this case, the petitioners were duly communicated with such order. The petitioners have not demonstrated how the petitioners are prejudiced. While distinguishing the judgment delivered by the Hon'ble High Court of Madras in the case ***Innovative Security Solutions*** (supra), he would submit that in the said case, the order impugned was passed more than 20 months after the final hearing but such is not the case here. On similar considerations, the other judgments are also distinguishable on facts. No reliance be placed on the same.

11. Heard the learned advocates appearing for the respective parties and considered the material on record. On perusal, I find that in the instant case, the petitioners were served with show-cause notice. The petitioners had duly responded to the same. It is also an admitted position that the petitioners had filed repeated responses and had taken more than three years to respond to the show-cause. Several opportunities of hearing had been given to the petitioners between 6th March, 2019 to 27th April, 2021. It is at the instance of the petitioners that the personal hearing was re-fixed on 18th May, 2021, however, the petitioners did not turn up on the said date. In

the meantime, the incumbent to the post of Kolkata North Commissionerate was transferred. Following the same, the case was re-assigned to him whereupon a notice was issued on 11th November, 2022. Accordingly, fresh personal hearing notice was given and the date was re-fixed on 28th February, 2023. The petitioners did not attend such personal hearing. At the instance of the petitioners, hearing was re-fixed on 21st March, 2023, 29th August, 2023 and 5th September, 2023. It is only on 19th September, 2023 that the petitioners' representative appeared and made submissions. The issue of lack of jurisdiction of the adjudicating authority was never raised before the Adjudicating Authority/Proper Officer. The circular dated 10th March, 2017 provides that the hearing ought to be concluded by the notice issuing authorities. However, the same also makes provisions for the successor in office to proceed with the matter and complete the hearing. Since, the instant case had progressed, the case was re-assigned to the incumbent who was originally holding the post of Commissioner North Commissionerate, Kolkata, I do not find any irregularity in the same as he was the original notice issuing authority. The petitioners also did not challenge the same at any stage. The above issue in my view has been raised by the petitioners as by way of an afterthought and as such the same cannot be accepted.

12. I must note that although, Mr. Chowdhury by placing reliance on the order passed by the Adjudicating Authority has submitted that on 17th October, 2023 though the petitioners' representative was present, the adjudicating officer was not available, accordingly no hearing took place on 17th October, 2023, the same appears to be a bald statement. The same is not supported by contemporaneous representations. This apart, although a statement in this regard, has been made in the writ petition in paragraph 14, such statement has been affirmed by one Roop Chand Tosniwal, as true to knowledge. Admittedly, such deponent on the showing of the petitioners, was not present on the date of personal hearing, i.e., on 17th October, 2023. On such ground, I am unable to accept the contention of Mr. Chowdhury, learned advocate representing the petitioners.

13. On the issue of the order being passed beyond the period provided in the circular dated 10th March, 2017, I find that paragraph No.14.10 provides for the manner in which the order is to be issued and communicated. To morefully appreciate the same, the relevant paragraph is extracted below;

> ***"14.10 Issue and Communication of order:*** *In all cases where personal hearing has been concluded, it is necessary to communicate the decision as expeditiously as possible but not later than one month in any case, barring in exceptional circumstances to be recorded in the file. The order is required*

> *to be communicated to the assessee in terms of provisions of Section 37C of the CEA, 1944."*

14. From the above, it would reveal that the same speaks of an endeavour to be made by the authorities to expeditiously communicate the decision. Though an emphasis has been laid that the order be communicated not later than one month, however, at the same time, such paragraph also provides that in exceptional circumstances, the order can be communicated beyond such period by making appropriate recording in the file. In the instant writ case, respondents have not produced the file and as such, this Court is unable to ascertain whether there has been any recording in this regard in the file. I also note that such paragraph also records that communication of the order has to be made in terms of the provisions of Section 37C of the Central Excise Act, 1944. Although, much stress has been placed on the judgment delivered in the case of ***Innovative Security Solutions*** (supra) by Mr. Chowdhury to contend that any order passed beyond one month without any exceptional circumstances is bad and should be set aside, I find that the consideration for setting aside the order by the Coordinate Bench of the Hon'ble Madras High Court was different. I find that the Hon'ble Court in the said case by noting that the order impugned was passed more than 20 months after the personal hearing, had set aside the order. Such is not the case here.

15. Insofar as the judgment delivered in the case of ***L.M.B. Sons*** (supra) is concerned the Hon'ble Jharkhand High Court had set aside the order on the ground that the order was not communicated to the petitioners within one month from the closure of personal hearing and that there were no reasons recorded by the respondents for the delay in communicating the impugned order beyond the stipulated period of one month after closure of personal hearing. Consequently, the Court held that the impugned order was in contravention of the circulars of the revenue department and accordingly set aside the same. Although, the Hon'ble Jharkhand High Court has taken a view that an order passed in contravention of a circular cannot be sustained. I, however, find from the tenor of paragraph No.14.10 as noted above that the same requires the adjudicating authority to communicate the order expeditiously and not later than one month from the date of personal hearing except for exceptional circumstances to be recorded in the file. Although, the file has not been produced, from the order impugned, I find that enough explanation has been provided for the delay. It may be noted that the petitioners took more than three years to file its final response. Subsequently, the petitioners to defer the personal hearing claimed that relied upon documents were damaged due to lockdown. As such photocopies of RUDs were once again supplied to the petitioners. On 19th September, 2023 at the request of the petitioners, hearing was re-fixed on 17th October, 2023. Since after

then, the petitioners did not appear. After waiting for considerable period the above order was passed. The petitioners having taken several months to respond to the show-cause and having successfully delayed the hearing and having not appeared on 17th October, 2023 cannot be permitted to frustrate the order. Further no consequence for non-compliance of paragraph 14.10 noted above has, however, been provided in such circular. Since no adverse consequence has been provided for, in my view, such provision can at best be said to be directory and not mandatory so as to invite a consequence of rendering the order nugatory.

16. Further, if the argument of the petitioners are to be accepted and an order is not passed or communicated within a period of one month from the date of closure of the personal hearing, the same may lead to serious consequence, especially when the revenue authority, while dealing with matters, have limited resources in hand especially with regard to disposal of cases. Insofar as the judgment delivered in the case of ***Shantilal Jain*** (supra) is concerned, the same is based on advocate concession. The judgment delivered by the Hon'ble Jharkhand High Court in the case of ***L.M.B. Sons*** (supra) proceeds more on the binding nature of the circular, in such case the issue as to whether paragraph 14.10 is mandatory or directory was not considered. In any event, in my view, appropriate explanation for delay in passing the order is available in the order itself.

17. Accordingly, the writ petition fails and since no other point is raised, the writ petition being WPA 4165 of 2025 is hereby dismissed.
18. There shall be no order as to costs.
19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Pritam
A.R. (Court)