21.05.2025
Item No
AD 9
Saswata

WPA 10784 of 2025

Howrah Chemical & Solvent
versus
The Joint Commissioner, Commercial Taxes, Shibpur Charge & Ors.

Mr. Avra Mazumder
Mr. Suman Bhowmick
Ms. A. Das
Mr. Samrat das
Ms. Elina dey
Mr. Siddhartha Das
Mr. S.N.Banerjee
...For the petitioner
Mr. A.Ray, Ld. GP
Mr. Md. T.M.Siddqui, Ld. AGP
Mr. T.Chakraborty
Mr. Saptak Sanyal
Mr. D. Sahu
...For the State

1. Challenging the order passed under Section 73 of the CGST /WBGST Act, 2017 (hereinafter referred to as the "said Act") dated 20th January 2025 in respect of the tax period April 2020 to March 2021, the instant writ petition has been filed.

2. It is the petitioner's case that a show cause notice was issued on 22nd October 2024 under Section 73 of the said Act for the tax period April 2020 to March 2021 and though, the petitioner had, on 21st November 2024, sought for an adjournment for 20 days with a request to afford the petitioner an opportunity of personal hearing, the proper officer had decided the show cause notice ex parte by order dated 20th January 2025 without acceding to the petitioner's request for adjournment and without affording the petitioner an opportunity of personal hearing.

3. Prima facie it would transpire that the aforesaid order has been passed de hors the provisions contained in Section 75(5) of the said Act. Admittedly, the show cause notice contemplates passing of an adverse order and having regard thereto, an opportunity of personal hearing ought to have been granted prior to taking a decision. In the instant

case, the petitioner had sought for an adjournment of 20 days. The proper officer without considering the same had passed an order. The aforesaid is also de hors the provisions contained in Section 75(5) of the said Act which enables the petitioner to seek for an adjournment upon showing sufficient cause.

4. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I am of the view that the aforesaid order which is contrary to the statute also appears to have been passed in violation of principles of natural justice. The same is accordingly set aside and the matter is remanded back to the proper officer for fresh adjudication on merits upon giving an opportunity of hearing to the petitioner.

5. If the petitioner has, till date, not filed any response to the show cause, the petitioner shall be at liberty to file the same within 10 days from date.

6. The aforesaid direction for filing of response is peremptory. All consequential steps taken by the respondents including initiation of recovery proceedings stand quashed. If any amount has been recovered from the petitioner's credit ledger, the same shall be reversed and re-credited to the petitioner's credit ledger on or before the matter is taken up for final hearing by the proper officer.

7. Needless to note that the proper officer shall conclude the proceedings as expeditiously as possible not later than 4 weeks from the date of filing the response by the petitioner or with 4 weeks from the date of communication of this order whichever is later.

8. With the above observations and directions, the writ petition stands disposed of.

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

(Raja Basu Chowdhury, J.)