25.08.2025
Item No.
AD 3
Saswata

WPA 18410 of 2024

M/s S.N.Chatterjee & Company
Versus
State of West Bengal & Ors.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Sayan Sinha
Mr. Kausheyo Roy
...For the petitioner
Mr. Amitabrata Roy, Ld. GP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. S.Sanyal
...For the State

1. Challenging, inter alia, the order dated 24th April 2024 passed by the proper officer under Section 73 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period April 2018 to March 2019, the instant writ petition has been filed.

2. Mr. Majumdar, learned Senior Advocate appearing for the petitioner has drawn the attention of this Court to the show cause notice issued in form GST DRC – 01 dated 26th December 2023 and would submit that the proposed determination made in the said show cause notice and the final demand determined under Section 73 of the said Act in the order dated 24th April 2024 are at variance to the extent that the demand in the adjudication order exceeds the demand in the show-cause.

3. Mr. Sanyal, learned advocate appearing for the State on the other hand submits that the aforesaid variance is in relation to the determination being made by the proper officer. He submits that having regard to the provisions contained in Section 73(9) of the said Act, the proper officer determined the actual tax and the liability that was found to be due. In the process as aforesaid, an addition has been made to the penalty only. The same cannot have the effect of vitiating the aforesaid order.
4. Having heard the learned advocates appearing for the respective parties and noting that ordinarily a demand under Section 73(9) of the said Act can only be confirmed provided a demand cum show-cause in that regard is made under Section 73(2) of the said Act, having regard to the provisions of Section 75(7) of the said Act and noting that in the instant case the penalty has been enhanced without notice to the petitioner, I am of the view that it shall be prudent at this stage to treat the aforesaid order dated 24th April 2024 as a show cause notice for the petitioner to respond to the same.
5. The petitioner shall be entitled to respond to the above order by treating the same as a show

cause notice, within a period of 3 weeks from date.

6. In the event, the petitioner responds to the show cause within the aforesaid period, or in the alternative fails to respond to the show-cause, the proper officer, upon giving an opportunity of personal hearing to petitioner, shall hear out and dispose of the aforesaid matter within a period of 4 weeks thereafter.
7. It is made clear that if the petitioner does not respond to the show cause within the aforesaid period, no further opportunity of filing response to the show-cause shall be required to be given to the petitioner and in such case, the proper officer shall be obliged to decide the same in accordance with law within the aforesaid period.
8. With the above direction and observation, the writ petition is disposed of.
9. 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.)