

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 24011 of 2024

Snehashis Dutta
versus
Union of India & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Ms. Shiwani Shaw
Mr. A. Roy
Mr. Gaurav Chakraborty
... For the petitioner.

Mrs. Manju Manat Agarwal, Sr. Advocate,
Mr. Arka Bhattacharya
... For Union of India.

Mr. Uday Shankar Bhattacharya
Mr. K. K. Maiti
... For CGST authorities.

1. Challenging the order in original dated 14th December, 2023 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 1st April, 2017 to 31st March, 2018, the instant writ petition has been filed.
2. Mr. Ray, learned advocate appearing in support of the writ petition has drawn attention of this Court to the audit report issued in terms of Section 65(6) of the said Act dated 1st June, 2022 to make out a case that the issues that were considered during audit had all been resolved upon the petitioner depositing the tax for the relevant financial years 2017-18, 2018-19 and 2019-2020 as per the details provided in the said report. By drawing attention of this Court to the acceptance of the reply given by the petitioner against the notice issued

under Section 61 of the said Act dated 6th June, 2022, he submits that the petitioner's response has been accepted and since the reply was found satisfactory, by letter dated 4th July, 2022 issued by the Superintendent Central CGST in form ASMT-12 it was recorded that no further action is required to be taken in the matter. According to him, the matter relates to short/non-reversal of input tax credit for the financial year 2017-18. Notwithstanding the entire issue having been resolved, a fresh notice in Form GST DRC 01 was issued on 8th September, 2023 in respect of the selfsame tax period i.e. July, 2017 to March, 2018. In response to the same, the petitioner had duly notified the proper officer with regard to the aforesaid developments and had highlighted the entire facts by its response dated 18th October, 2023. According to Mr. Ray, the proper officer by ignoring such response has passed the order impugned.

3. Learned advocate representing the CGST authorities, despite being afforded with opportunity, would submit that he is yet to receive any instruction from the concerned authorities.
4. Having heard the learned advocates appearing for the respective parties and considering the fact that the hearing of the matter cannot be deferred indefinitely and noting that in the order impugned the proper officer had recorded that the noticee has not submitted any written reply against the show cause notice and

taking note of the fact that such issue cannot be improved by the respondents by filing any affidavit, having regard to the electronic acknowledgement issued by the respondents acknowledging the response to the show cause which appears to have been uploaded by the respondents on the common portal in Form GST DRC-6 which is not disputed by the learned advocate representing the respondents, I am of the view, that no fruitful purpose will be served by keeping the writ petition pending and it would be prudent to remand the matter back to the proper officer for re-adjudication of the show cause having regard to the reply already filed by the petitioner which is on record.

5. The proper officer is directed to decide the above issue in accordance with law by considering the response to the show-cause, upon giving an opportunity of hearing to the petitioner.
6. As a sequel thereto, the order passed by the proper officer dated 14th December, 2023 for the tax period 1st July, 2017 to 31st March, 2018 under Section 73 of the said Act stands set aside.
7. With the above observations and directions the writ petition is disposed of.
8. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)

