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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 31078 of 2024

Upendra Mahato
Versus
Union of India & Ors.

Mr. Himangshu Kumar Ray
Ms. Shiwani Shaw
Mr. Animitra Roy
Mr. Subhasis Podder
Mr. Piyas Chowdhury
... For the petitioner.

Mr. Kaushik Dey
Mr. Kaustuv K. Maiti
... For the CGST authorities

1. Although the matter has come up under the heading “Extension of Interim Order” since, the petitioner insists for hearing of the writ petition, by consent of the parties, this matter is taken up for final hearing.

2. The petitioner is registered under the provisions of the Central/West Bengal Goods and Services Tax Act, 2017(hereinafter referred to as the “said Act”) and is a registered tax payer.

3. The petitioner was served with a show cause notice in Form GST DRC 01 on 18th September, 2023. The petitioner claims to have given response to the said show cause on 15th December, 2023. In the interregnum, however, an order in original was passed on 14th December, 2023. The demand was, however,

raised on the basis of the aforesaid order on 20th December, 2023 in Form GST DRC 07. Still later, sometimes on 26th January, 2024, the petitioner made an application for rectification of the above order by invoking the provisions of Section 161 of the said Act on the ground that the petitioner had submitted a detailed reply which had not been considered. According to the petitioner, the petitioner after having received the order sheet of the audit report under Section 65(6) of the said Act, dated 19th January, 2023 for the Siliguri Circle in respect of the financial year 2017-18, 2018-19 and 2019-20, had paid the entire tax and interest including the penalty in Form GST DRC 03, however, without considering the same the order impugned had been passed.

4. Initially, when the aforesaid writ petition was taken up for consideration, by an order dated 19th February, 2025, this Court taking into consideration the fact that the order impugned had been uploaded on 20th December, 2023 while the same had been passed on 14th December, 2023, had directed the respondents to take appropriate instruction in the matter.

5. Today, Mr. De, learned advocate appearing on behalf of the respondents would submit that admittedly in this case a show cause dated 8th September, 2023 was issued under Section 73 of the said Act in respect of

the tax period July, 2017 to March, 2018. By such show cause, the petitioner had been called upon to respond to the same within 30 days from the receipt of the notice or on/or before 9th October, 2023. According to him, since the petitioner did not respond to the show cause, the order impugned has been passed *ex parte*. By referring to the order impugned he would submit that the petitioner was duly afforded with an opportunity of hearing, however, the petitioner did not avail the same. On the issue of uploading the Form GST DRC 07 on the portal on 20th December, 2023 he would submit that since there was heavy work load there was delay in uploading the demand raised in Form GSTDRC-07, the same has nothing to do with the order which was separately issued.

6. Mr. Ray, learned advocate representing the petitioner in response would, however, submit that the aforesaid show cause does not conform to the statutory provisions. The same does not indicate the date of personal hearing. The petitioner was not afforded with any personal hearing. The respondents were duty bound to consider the petitioner's response, at least, when the petitioner had filed a rectification application. He also insists that the factum of the audit conducted by the respondents ought to have been taken into consideration, which had not been done.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, it would be apparent from the above that a show cause had been issued and the petitioner did not respond to the said show cause within the time specified in the show cause. Although, Mr. Ray, contends that the show cause notice does not comply with the statutory provision and the petitioner had not been given an opportunity of hearing, no date and time was mentioned in the show cause, I, however, find that in the rectification application filed by the petitioner on 26th January, 2024, none of such grounds have been raised. The grounds raised in the rectification application have already been noted hereinabove. Having regard thereto, I am of the view that the aforesaid contention raised by Mr. Ray, in Court is an afterthought, especially when the response to the show-cause was filed more than two months after the date for filing the response had expired. No explanation for the delayed response was noted in the rectification application. There appears to be no valid ground for invoking Section 161 of the said Act. The petitioner has an alternative remedy in the form of an appeal, the petitioner however, chose not to invoke such remedy and after more than a year from the date of passing of the order under Section 73 of the said

Act, the instant writ petition has been filed that too after more than a month from the date of the order of rejection of the rectification application. Although Mr. Ray would contend that the respondents had decided the petitioner's rectification application without giving an opportunity of hearing, I am of the view that in the given facts the same cannot justify the petitioners' belatedly approaching this Court. The petitioner cannot be permitted to frustrate the adjudicatory process as provided for in the scheme of the said Act. The writ petition fails and the same is accordingly dismissed.

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 of requisite formalities.

(Raja Basu Chowdhury, J.)