IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1441 of 2025

Aminul Hoque

Vs.

State of West Bengal & Ors.

For the petitioner	: Mr. Dhiraj Lakhotia, Adv. Ms. Radhika Agarwal, Adv. Mr. Meghana Joshi, Adv. Ms. Khushi Kunden, Adv.
For the State respondent	: Mr. Momenur Rahman, Adv.
Heard On	**: 07.7.2025**
Order On	**: 07.07.2025**

Om Narayan Rai, J.

1. Affidavit of service filed by the petitioner is taken on record.

2. The petitioner is aggrieved by an order dated December 13, 2023 passed under Section 73(9) of the CGST 2017 and WBGST 2017 (thereafter said Act of 2017) by the Assistant Commissioner of Revenue, Jalpaiguri Charge.

3. Mr. Lakhotia, learned counsel appearing for the petitioner submits that the order impugned is a nullity inasmuch as the same has been passed without affording reasonable opportunity of hearing to the petitioner. He invites the attention of this Court to the

summary of show-cause notice dated September 27, 2023 and points out that under the caption "Details of personal hearing and due date to file reply", the slabs meant for indicating the date of personal hearing, time of personal hearing and venue where hearing would be held, have been filled up by mentioning "NA". He then takes the court to the show-cause notice issued under Section 73(9) of the said Act of 2017 as well as the Reminder in respect of the show-cause notices where again, the slabs where date of personal hearing, time of personal hearing and venue of personal hearing were to be mentioned have been similarly filled up by mentioning "NA".

4. Inviting the attention of this Court to the print out of the screen short of the relevant GST portal, he submits that the aforesaid show-cause notices and the order impugned were uploaded under the tab/head "Additional notices and other", which were not noticed by the petitioner. It is submitted that since the notices required the petitioner to show-cause and the order was one of adjudication, the same ought to have been uploaded under the main heading "Notices and Orders" and uploading thereof under some other tab led to defiance of attention and notice of the petitioner.

5. Mr. Lakhotia further invites the attention of this Court to a judgment of the Hon'ble Division Bench in the case of the of *Goutam Bhowmick Vs. State of West Bengal reported at 2024 158 taxmann.com399(Cal)* and submits that in a somewhat similar fact situation the Hon'ble Division Bench had been pleased to set aside the order passed under Section 73(9) of the said Act.

6. As regards the submission that uploading of the notices and orders under the "Additional notices and other tab has bred confusion and has led to escapement of notice, Mr. Lakhotia relies on the following judgments.

"*1. Ishan Snax Private Limited versus Assistant Commissioner of Revenue, Siliguri Charge & Ors. in WPA 1517 of 2024 in the Hon'ble High Court at Calcutta In the Circuit Bench at Jalpaiguri*

2. Mahadev Industries versus Union of India reported in

[2025] 174 taxmann.com 756 (Delhi),

3. Viswaat Chemicals Ltd. versus Sales Tax Officer reported in [2025] 173 taxmann.com 419 (Gujarat)

4.Surya Resmi Traders versus State Tax Officer reported in[2025] 173 taxmann.com 644 (Kerala)

5.Tvl. Sri Renkanna Steels versus Assistant Commissioner (ST), Chennai reported in[2024] 165 taxmann.com 727 (Madras)

6. St. Xaviers College Calcutta Alumni Association Vs Dy Commissioner Of Revenue Cgst And Ors in WPO 559 Of 2024 In The Hon'ble High Court At Calcutta Original Side

7. Sukumar Kundu versus Union of India & Ors. inWPA 12124 of 2024 in the Hon'ble High Court at Calcutta

8. Krishna Sales versus Commissioner of Delhi Goods and Service Tax reported in[2025] 174 taxmann.com 662 (Delhi)

9. Unique Computer & Communication Shop versus State of U.P. reported in [2025] 175 taxmann.com 119 (Allahabad)."

7. Ms. Sarkar, learned counsel appearing for the respondent authorities submits that order has been validly passed and that the same should not be interfered with.

8. Having heard learned counsel appearing for the parties and having considered the material on record, this Court of the view that the order dated December 13, 2023 cannot be sustained.

9. Evidently, the order impugned has been passed without affording the petitioner reasonable opportunity to present his case.

10. It is now well settled that an order, which has been passed in abject violation of principles of natural justice is void. (See Shridhan Vs. Nagar Palika, Jaumpur reported at AIR 1990 SC 307).

11. The order impugned herein as been passed without giving the petitioner appropriate opportunity to answer the show-cause notice inasmuch as neither the time to appear before the authorities for personal hearing nor the venue therefor nor the date for the

same was indicated in the show cause notices. To wit, the summary of show cause notice provides as follows.

Sr. No.	*Description*	*Particulars*
1	*Date by which reply has to be submitted*	*27-10-2023*
2	*Date of personal hearing.*	*NA*
3	*Time of personal hearing*	*NA*
4	*Venue where personal hearing will be held*	*NA*

12. The show cause notice which followed the said summary to show cause mentions nothing at all as regards timelines for even filing reply. It concludes with the following :-

"Therefore, you are directed to pay the amount or to show cause as to why such an amount as mentioned above would not be charged upon you positively within thirty days from the receipt of this notice. In the event of noncompliance the proceedings will be initiated against you as per the provision of WBGST laws without further reference".

The reminder thereto provides thus:-

"You may appear before the undersigned for personnel hearing either in person or through authorized representative for representing you case on the date, time and venue, if mentioned in table below.

You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein."

Sr. No.	*Description*	*Particulars*
1	*Date by which reply has to be submitted*	*15/11/2023*
2	*Date of Personal Hearing*	*NA*
3	*Time of Personal hearing*	*NA*
4	*Venue where Personal Hearing will be held*	*NA*

14. Thus, the summary to show cause notice as well as the reminder thereto merely indicate a deadline by which a reply was to be filed and there is no indication of where and when would the noticee be personally heard.

15. The Hon'ble Division Bench of this Court in the case of *Goutam Bhowmick (Supra)* took note of a similar situation as the one at hand and set aside the adjudication order with inter alia the following observation:-

"7 From bare perusal of the show cause notice under Section 73 of the WBGST/CGST Act, 2017, it is evident that no opportunity of hearing was afforded by the proper officer before passing the impugned assessment order for the Financial Year 2018-19 i.e. From April 2018 to March 2019 Although in the show case notice dated 15. 01.2021 under Section 73 of the Act it was specifically mentioned by the proper officer addressing the petitioner that "You may appear before the undersigned for personal hearing either in person or through authorized representative for representing you case on the date, time and venue, if mentioned in table below" but in the table neither date and time nor venue for personal hearing was mentioned.

8. Section 75(4) of the WBGST/CGST Act, 2017, specifically provides as under:-

"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person"

9. Thus as per provisions of sub-section 75 of the WBGST/CGST Act, 2017, when the proper officer contemplated a decision against the petitioner/assesee, then it was mandatory for him to afford an opportunity of hearing. From the perusal of the show cause notice dated 15.1.2021, it is evident that the proper officer has declined to afford an opportunity of hearing to the petitioner inasmuch as it has not communicated any date, time and venue of hearing."

16. The petitioner has in paragraphs 12 and 13 of the writ petition explained that the petitioner could not approach this Court earlier inasmuch as the impugned notices and order came to his knowledge on June 20, 2025, during a routine compliance review since the same were uploaded under the Tab-"Additional notices and others" on the GST portal.

17. This Court has noticed the dicta of several judgments of various High Courts including this Court which have been placed by Mr. Lakhotia, which indicate that uploading of show cause notices and orders under the tab "Additional notices and other" had indeed created confusion and had escaped notice of the assesses. This court therefore has no reason to disbelieve the explanation given by the petitioner.

18. In fact, in such a state of confusion, even if the notice to show casue had been delivered to the petitioner, it would have been impossible for the petitioner to appear before the authorities and present his case as no date and time for appearance was fixed.

19. In the case of Gautam Bhowmick (Supra) the Hon'ble Division Bench set aside the adjudication order passed on March 25, 2021 by allowing a writ petition filed in 2023 by holding inter alia that the order impugned therein had been passed by *"the proper officer in complete breach of statutory mandate contained in Section 75(4) of the WBGST Act"* i.e. without affording an opportunity of hearing to the petitioner.

20. In such view of the matter, the order impugned dated December 13, 2023 and the show cause notice dated September 27, 2023 stand set aside.

21. This order shall, however, not preclude the respondent from re-issuing a fresh show-cause notice for the same year/years for which the earlier show cause notice dated September 27, 2023 (which hereby stands set aside) had been issued. If such show cause notice is issued within a period of two months from date, the show cause notice and the proceedings arising therefrom shall be treated as within time and shall not be treated as barred by limitation.

22. Urgent certified photo copy of this order, if applied for, be supplied as expeditiously as possible.

[Om Narayan Rai, J.]