JPD 48
S. Banerjee
AR (Ct.)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench At Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 2008 of 2025

Bratin Sikder
Vs.
State of West Bengal & Ors.

For the Petitioner	: Mr. Dhiraj Lakhotia Ms. Radhika Agarwal Ms. Meghana Joshi Ms. Khushi Kundu Ms. Madhulika Sharma
For the State	: Mr. Hirak Barman Ms. Rima Sarkar
Heard on	: 06/11/2025
Judgment on	: 06/11/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 226 of the Constitution of India is directed against the order dated April 25, 2022 passed by the Assistant Commissioner of Revenue, State Tax, B.I. (North Bengal), Alipurduar Zone, Alipurduar.

2. The petitioner is a sole proprietorship concern engaged in the business of works contract. The petitioner is registered under the West Bengal Goods and Services Tax Act, 2017 (in short WBGST Act, 2017). A show-cause notice dated March 22, 2022 was issued by the concerned Assistant Commissioner of Revenue, State Tax authority asking the petitioner to show-cause as to why the petitioner should not pay the amount as indicated in the said show-cause notice. Petitioner claims to have replied to the said show-cause notice and the concerned Assistant Commissioner confirmed the demand raised in the show cause notice by the impugned order.

3. The learned advocate appearing for the petitioner submits that no opportunity of hearing was afforded to the petitioner prior to passing of the impugned order. He submits that when an adverse order is contemplated against a person an opportunity of hearing has to be afforded to such person.

4. Ms. Sarkar, learned advocate appearing for the State submits that the order impugned is an appealable order under the provisions of Section 107 of the WBGST Act, 2017. She further submits that the order impugned was passed sometimes in the month of April, 2022 and, therefore, the writ petition is liable to be dismissed on the ground of delay and latches alone.

5. In reply, the learned advocate appearing for the petitioner submits that the order impugned was uploaded only under the

"Additional Notices and Orders" Tab and the petitioner only came to know of the order on August 30, 2025. He, thus, submits that there has been no delay and latches on the part of the petitioner in approaching the Court. He further submits that since there has been violation of the principles of natural justice the petitioner has approached the Writ Court instead of availing the appellate remedy under the Act.

6. Heard the learned advocates for the parties and perused the materials placed.

7. With regard to the objection raised by Ms. Sarkar, learned advocate appearing for the State that the writ petition is liable to be dismissed on the ground of delay and latches, this Court finds that it is the specific case made out in the writ petition that the order impugned was uploaded in the "Additional Notices and Orders" Tab. It is the case of the petitioner that the said order was not uploaded in the normal Tab. The petitioner claims that he came to know of the said order from the "Additional Notices and Orders" Tab only on August 30, 2025 and the writ petition has been filed immediately thereafter i.e. on September 8, 2025.

8. It is well-settled that the period of limitation for challenging an order shall start to run with effect from the date of communication of the said order.

9. The question that arises for consideration is which date should be taken to be the starting point of limitation in a case of this nature.

10. The Hon'ble Division Bench in the case of **Ram Kumar Sinhal vs. State of West Bengal**, reported at **[2025] 177 taxman.com 48 (Calcutta)** held that the accessibility of the notice only under the Additional Tab, as opposed to the Normal Tab, could not constitute a proper communication or uploading as contemplated in Section 73(1) of the WBGST Act, read with the concerned Rules.

11. It is not the case of the revenue that the order impugned was uploaded in the Normal Tab.

12. By applying the proposition of law laid down by the Hon'ble Division Bench in the case of **Ram Kumar Sinhal** (supra), this Court holds that the accessibility of the notice in the instant case under the Additional Tab could not constitute a proper communication or uploading as contemplated in Section 73(1) of the WBGST Act, 2017 read with the concerned Rules. Therefore, the date of uploading of the order under the Additional Tab cannot be the starting point of limitation for assailing such an order.

13. This Court, therefore, holds that there was no delay and latches on the part of the petitioner in approaching this Court.

14. After holding in favour of the petitioner on the ground of delay and latches, this Court shall now proceed to decide the writ petition on merits.

15. A Show Cause Notice (for short “SCN”) under Section 73(1) of the WBGST/CGST Act, 2017 was issued on 22.03.2022 alleging that the petitioner has claimed more Input Tax Credit (for short “ITC”) than accrued in GSTR 2A and the petitioner was required to show cause as to why the petitioner should not pay the amount indicated in the said SCN. Petitioner submitted a reply to the SCN. The adjudication order under Section 73 was passed determining the amount of tax, interest and penalty for the Financial Year 2018-2019.

16. Section 75 of WBGST/CGST Act 2017 lays down the general provisions for determination of tax. Subsection (4) of Section 75 states that 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.

17. From a bare reading of the provisions laid down in Section 75(4), it is evident that where any adverse decision is contemplated against the person, an opportunity of hearing shall be granted.

18. After going through the show-cause notice dated March 22, 2022, this Court finds that it has been stated therein that the petitioner may appear before the authority for personal hearing

either in person or through authorized representative for representing his case on the date, time and venue, if mentioned in table below.

19. However, from the tabular chart, it appears that as against serial Nos.3,4 and 5 which deals with date of personal hearing; time of personal hearing and venue of personal hearing, the remark "NA" has been recorded. Thus it appears that though in the body of the show-cause notice it was stated that the petitioner may appear for a personal hearing but no date, time and venue of such personal hearing was mentioned in the show-cause notice.

20. It is well-settled that an opportunity of hearing has to be an effective opportunity. In the absence of any date, time and venue for such personal hearing being fixed by the concerned authority in the SCN, it cannot be said that an effective opportunity of hearing was afforded to the petitioner.

21. From the SCN issued under Section 73(1), it is evident that an adverse decision was contemplated against the petitioner and the impugned order was passed determining the tax, interest and penalty without affording any opportunity of hearing to the petitioner.

22. The Hon'ble Division Bench in the case of **Goutam Bhowmik vs. State of West Bengal**, reported at **[2024] 158 taxman.com 399 (Calcutta),** after taking note of the provisions of Section 73 read

with Section 75(4) of the WBGST/CGST Act, 2017 held that the proper officer is bound to afford an opportunity of hearing where either request in writing is received by him from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. It was further held that opportunity of hearing is a statutory mandate which cannot be violated by the proper officer and the event of such violation, the order passed by the proper officer cannot be sustained. The Hon'ble Division Bench held thus:-

> "***6.*** *Briefly stated facts of the present case are that the appellant/petitioner is a proprietorship concerned engaged in the trade of Timber and registered under the WBGST/CGST Act, 2017. He has filed its return regularly. A notice under Section 73(5) of the Act, 2017 dated 11.12.2020 was issued by the Assistant Commissioner of State Tax, Jalpaiguri Charge, for the financial year 2018-19, on the ground that there is some mismatch between FORM GSTR-7 and STR-3B for the financial year 2018-19. The aforesaid notice was followed by a show cause notice dated 15.01.2021 under Section 73 of the Act 2017. <u>From bare perusal of the notice, it is evident that neither any date, time or place of hearing was fixed nor any personal hearing was intended to be afforded.</u> Thereafter, the Assistant Commissioner of State Tax (GST) Jalpaiguri charge, passed the impugned order dated 25.03.2021 under Section 73 of the WBGST Act, 2017 for the financial year 2018-19, creating liability to tax of the appellant/petitioner in addition to the disclosed trading result and liability to tax admitted by the petitioner in his returns. Aggrieved with the order under Section 73 and the notices, the writ petitioner had filed the above noted WPA No. 1866 of*

2023 which was dismissed by the learned Single Judge by the impugned judgment and order dated 18.11.2023.

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 cause 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 your 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 4 of Section 75 of the WBGST/CGST Act, 2017, when the proper officer contemplated a decision against the petitioner/assessee, then it was mandatory for him to afford an opportunity of hearing. From the perusal of the show cause notice dated 15.01.2021, 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.*

10. *A Division Bench of the Allahabad High Court in Bharat Mint and Allied Chemicals v. Commissioner of*

Commercial-tax, reported in (2022) 59 GSTL 394/ (2022) 136 taxman.com 275/92 GST 61, on similar set of facts, has held as under:-

"7. In the table below the aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) of the Act, 2017 provides that opportunity of personal 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.

8. Section 75(4) of the Act, 2017 reads 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. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person."

11. *<u>Considering the facts and circumstances of the present case, the provisions of Section 73 read with Section 75(4) of the WBGST/CGST Act, 2017, we are of the view that proper officer is bound to afford an opportunity of hearing where either a request in writing is received by him from the person chargeable with tax or penalty, or where any adverse</u>*

> *<u>decision is contemplated against such person.</u> To afford opportunity of hearing is a statutory mandate which cannot be violated by proper officer and in the event of violation the order passed by the proper officer cannot be sustained. Under the circumstances, the impugned order dated 25.03.2021 passed by the proper officer for the period April 2018 to March 2019 cannot be sustained and deserves to be quashed and the matter deserves to be remanded to the concerned Authority to pass an order afresh in accordance with law after affording reasonable opportunity of hearing to the petitioner/appellant."*
>
> ***(emphasis supplied)***

23. It is now well settled that where any adverse decision is contemplated against a person, an opportunity of hearing shall be granted which is a statutory mandate and an order passed by the proper officer in violation of such mandate, cannot be sustained.

24. This Court has already observed that no date, time and venue of the personal hearing was mentioned in the show-cause notice and, therefore, no opportunity of hearing could be said to have been afforded to the petitioner prior to passing the impugned order. Thus, there has been violation of the statutory mandate as well as gross violation of the principles of natural justice.

25. For all the reasons as aforesaid, this Court is inclined to grant relief in favour of the writ petitioner.

26. Accordingly, the order dated April 25, 2022 is set aside and quashed. The Assistant Commissioner of Revenue, State Tax

being the respondent No.2 is directed to serve a notice upon the petitioner fixing a date, time and venue of hearing and after giving an effective opportunity of hearing to the petitioner or his authorised representative shall pass a reasoned order strictly in accordance with law.

27. With the above directions **WPA 2008 of 2025** stands allowed.

28. There will be no order as to costs.

29. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)