**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. 2129 of 2025***

***Cosmopolitan Solar Energizer***
***Vs.***
***State of West Bengal & Ors.***

**For the Petitioner** : Mr. Anurag Sharma
Mr. Anik Majum der

**For the State** :Mr. Joyjit Chakraborty, Ld. AAG
Ms. Rima Sarkar

**Heard on** : 31/10/2025

**Judgment on** : 31/10/2025

**Hiranmay Bhattacharyya , J. :**

1. This application under Article 226 of the Constitution of India is directed against an order dated August 22, 2024 passed by the Assistant Commissioner, State Tax, Jalpaiguri Charge under section 73(9) of the WBGST Act, 2017.

2. The petitioner is a registered person under the West Bengal Goods and Services Tax Act, 2017 (for short 'WBGST Act), and

engaged in the business of installation of solar panels. A show-cause notice under section 73(1) of the WBGST Act has been issued dated May 16, 2024 alleging that upon scrutiny of the data furnished by the registered tax payer in GSTR 3B vis- a -vis GSTR1/GSTR-9 and claim in utilization of input tax credit (ITC) in respect of supply shown by its supplier in GSTR-1, few discrepancies revealed.

3. The petitioner was directed to show cause as to why the petitioner should not make the payment of tax, interest and penalty as indicated in the show cause notice. The show cause notice was followed by the impugned order passed under section 73(9) thereby determining the amount of tax, interest and penalty for the financial year 2019-2020.

4. The learned advocate appearing for the petitioner submits that no effective opportunity to give a reply to the show cause notice was afforded to the petitioner.

5. He further submits that the petitioner handed over all papers and documents to his erstwhile consultant requesting him to take steps. However, the erstwhile consultant did not take any step in the matter and also did not participate in the proceedings. The learned advocate further submits that thereafter the petitioner has taken a change from the erstwhile consultant and has engaged the present consultant.

6. He, therefore submits that since no reply to the show cause notice has been filed, an opportunity be given to the petitioner to contest the proceeding from the stage of filing reply to the show cause notice.

7. The learned Additional Advocate General seriously opposes the prayer made by the petitioner. He submits that the petitioner is carrying on a business as a sole proprietor. Even if the contention of the petitioner is accepted that he has handed over all papers and documents to the consultant, the petitioner ought to have been more vigilant in dealing with the financial aspects of the business and it is not believable that the petitioner only relied upon a Chartered Accountant entirely without caring to keep a vigil on the activities of the Chartered Accountant.

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

9. Section 73(9) of the WBGST Act states that the proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty equivalent to 10% of the tax or Rs. 10,000/- whichever is higher due from such person and issue an order. Section 75 of the WBGST Act lays down the provisions relating to determination of tax. Sub-section (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 any adverse decision is contemplated against such person.

10. From a conjoint reading of the provisions laid down under sections 73 and 75 of the WBGST Act, this Court is of the considered view that where an adverse decision is contemplated against a person, an opportunity of hearing shall be given to such person.

11. After going through the show cause notice, this Court is of the considered view that an adverse decision was contemplated against the petitioner. Thus, the proper officer was under a statutory obligation to afford an opportunity of hearing to the petitioner.

12. It is well-settled that such opportunity of hearing should not be an idle formality but the same has to be an effective one.

13. After going through the show cause notice dated May 16, 2024, which is annexed at pages 63-64 of the writ petition, it appears that the date on which the reply to the show cause notice is to be submitted was June 15, 2024 and the date of personal hearing was fixed on June 14, 2024 at about 11.00 a.m. From the said show cause notice, it appears that the date and time of personal hearing was fixed prior to the date permitting filing of the reply to the show cause notice.

14. The learned Additional Advocate General would contend that the show cause notice annexed at pages 63-64 of the writ petition is

a summary show cause notice and in the detailed show cause notice, the date and time has been correctly mentioned and there is no infirmity in fixing of dates in the said show cause notice.

15. However, after going through the detailed show cause notice, it appears that the time limit fixed for filing reply to the show cause notice was within June 15, 2024 and the date of hearing was fixed at about 11.30 a.m. on June 15, 2024. Upon going through the dates mentioned in the detailed show cause notice, it appears that the time was given to file reply to the show cause notice during the entire period of June 15, 2024 and the hearing was fixed at 11.30. a.m. on June 15, 2024.

16. The dates mentioned in the summary show cause notice and the detailed show cause notice with regard to the fixation of dates for filing the reply to the show cause notice and the date of personal hearing are contradictory and confusing.

17. Be that as it may, the reply to the show cause notice has not been filed. Show cause notice is the foundation of the proceedings. Reply to such show cause notice is necessary for the effective determination under section 73(9) of the Act.

18. The learned advocate for the petitioner would contend that the petitioner should not suffer due to the laches and negligence on the part of the consultant.

19. At this stage, it would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of **Rafiq & Anr. Vs. Munshilal & Anr.** reported at **AIR 1981 SC 1400**, wherein it has been held that the petitioner should not be made to suffer due to the laches and negligence on the part of the learned advocate.

20. Since the petitioner had engaged a consultant for dealing with the financial matters and it has been alleged that the erstwhile consultant did not take any step in this matter, this Court is inclined to grant a last opportunity to the petitioner to contest the proceeding from the stage of filing the reply to the show cause notice.

21. As already observed hereinbefore that no effective opportunity of hearing was passed as there was discrepancy in the dates fixed for filing the reply to the show cause notice and the date of personal hearing, as would be evident from the summary show cause notice.

22. For all the reasons as aforesaid, the writ petition stands allowed. The impugned order dated August 22, 2024 passed by the Assistant Commissioner of State Tax is set aside.

23. The petitioner is directed to file reply to the show cause notice dated May 16, 2024 within a period of two weeks from the date of receipt of server copy of this order. If the reply to the show cause notice is filed within the time limit mentioned

hereinbefore, the adjudicating authority being the 2nd respondent shall fix a date, time and venue of personal hearing by issuing appropriate notice in that regard.

24. The said authority is directed to dispose of the proceeding by passing a reasoned order after giving a reasonable opportunity of hearing to the petitioner or his authorized representative and communicate the said order to the petitioner immediately thereafter.

25. The entire exercise shall be completed within a period of four weeks from the date of hearing fixed by the said respondent.

26. In the event petitioner fails to file any reply within the time limit mentioned hereinbefore, this order shall automatically stand recalled and the writ petition shall stand dismissed without any further reference to this Court.

27. There will be no order as to costs.

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

***(Hiranmay Bhattacharyya, J.)***

*Item No.66*
*Court No.-2*
*PG*