30.06.2026
sayandeep
Sl. No. 01
Ct. No. 03

WPA 1546 of 2022

Vishnu Engineering Corporation
Vs.
Deputy Commissioner, Officer of the Joint Commissioner, Chandni Chowk Charge & anr.

Mr. Rishabh Karnani
Ms. Mou Saha
.... for the petitioner

Mr. Tapan Bhanja
..... for the UOI

Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
..... for the CGST

Ms. Manju Agarwal, Sr. Adv.
Mr. Ram Chandra Agarwal
.....for the State

1. Although the matter has come up under the heading "Extension of Interim Order", however, having regard to the fact that the matter is pending since 2022 instead of extending the interim order, by consent of the parties, the matter is taken up for consideration for final disposal.
2. Challenging the order dated 5th June, 2022 passed under the provisions of Section 74 (10) of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) for the tax period of April, 2018 to June, 2018, the instant writ petition has been filed. According to the petitioner, though a show cause notice was issued to the petitioner in form DRC 01 which

was preceded by a pre-show cause notice in form DRC 01A, however, the show cause notice dated 21st December, 2020 did not provide for a date when the petitioner would be offered opportunity of personal hearing. When the writ petition was initially moved, the same was entertained by an order dated 28th February, 2022 and an order of status quo was passed with regard to the adjudication order dated 5th January, 2022 till 28th March, 2022. Such interim order has subsequently been extended from time to time and/or reimposed and is still subsisting.

3. Ms. Agarwal, learned senior advocate appears for the WBGST. While Ms. Mukherjee, learned advocate appears for the CGST authorities. Ms. Agarwal, learned senior advocate while drawing attention of this Court to the affidavit-in-opposition filed by the respondent No. 1 would submit that in the instant case the petitioner was duly given opportunity of hearing in the form of show cause, the petitioner had also responded to the show cause. The proper officer had duly considered the show cause filed by the petitioner and thereafter had passed the order. There is no irregularity in the same.

4. Having heard the learned advocates appearing for the respective parties it appears from the show cause that the show cause did not indicate the date when the petitioner would be afforded with opportunity of hearing. Though in instant case, an adverse order was contemplated against the petitioner as is apparent from the show cause notice and the subsequent order passed by the respondents opportunity of hearing was not provided. I find that as rightly argued by the learned advocate for the petitioner Section 75(4) of the said Act, inter alia, provides that where a request is received in writing from the person chargable with tax or penalty or where an adverse decision is contemplated against such person an opportunity of hearing has to be given.
5. Having regard to the specific provisions contained in the statute and the violation thereof, I am of the view that the order passed by the proper officer cannot be sustained. Accordingly, the same is set aside.
6. The matter is remanded back to the proper officer for a re-adjudication on merits upon giving an opportunity of hearing to the petitioner. The proper officer is directed to conclude the proceedings by uploading a fresh notice on the common portal within a period of

one month from the date of communication of this order intimating the petitioner the date when personal hearing shall be offered, and the proceedings must be completed within a further period of one month thereafter. Since the petitioner has approached this Court challenging the order dated 5th June, 2022, and the writ petition was pending before this Court since 25th January, 2022, I am of the view that the entire period between 5th January, 2022 and the disposal of the writ petition shall stand excluded and the proper officer shall have time to complete the proceedings within the period as indicated hereinabove.

7. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)