01.04.2026
Item No.02.
Ct. No.237
Suman

WPA 22932 of 2024

M/s. Laxmidhan Stores and Anr.
-Vs-
The State of West Bengal and Ors.

Mr. Sandip Choraria
Mr. Akash Chakraborty
Mr. Pradeep Pandey
..for the petitioners

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
..for the State

By filing the present writ petition, the petitioner has challenged an order dated October 30, 2023 passed by the Senior Joint Commissioner, State Tax, Howrah Circle, whereby an order dated March 27, 2023 passed under Section 74 of the West Bengal Goods and Services Tax Act, 2017 has been affirmed.

It appears that the petitioner was issued a show cause notice dated June 3, 2022 under Section 74 of the said Act, alleging wrongful availment of input tax credit amounting to Rs. 3,06,247.50 on purported inward supplies of goods from M/s. Crescent Vintrade Private Limited during the period from April 2018 to March 2019. The said supplier was found to be non-existent at its declared principal place of business since inception and was alleged to have obtained GST registration on the basis of false and fabricated documents. It was further alleged that the registration of the said supplier had been cancelled ab initio with effect from October 25, 2017 under Section 29(2)(a) of the said Act.

Although the petitioner submitted a reply before the Assistant Commissioner of State Tax, Shibpur Charge, no opportunity of personal hearing was afforded to the petitioner by the said authority. Upon consideration of the petitioner's reply, the Adjudicating Authority, by an order dated March 27, 2023 passed under Section 74 of the said Act, demanded tax, interest, and penalty amounting to Rs. 3,06,248/-, Rs. 2,47,756/-, and Rs. 3,06,248/- respectively.

Aggrieved thereby, the petitioner preferred an appeal under Section 107 of the said Act. Before the Appellate Authority, the petitioner was afforded an opportunity of hearing, and upon consideration of the merits of the case, the Appellate Authority, by an order dated October 30, 2023, rejected the appeal and affirmed the order of the Adjudicating Authority.

Although this Court has heard the learned advocate for the petitioner at length on the merits of the case, it appears that the writ petition can be disposed of without entering into the merits of the orders impugned, on the ground of violation of statutory provisions.

It is not in dispute that the petitioner was not afforded an opportunity of personal hearing before the Adjudicating Authority. Such an opportunity was granted only at the appellate stage. In my view, the procedure adopted by the respondent authorities cannot be sustained in law.

The learned advocate for the petitioner has rightly contended that where there has been no proper adjudication in compliance with Section 75(4) of the said Act, owing to the absence of a personal hearing, such a defect cannot be cured by affording an opportunity of hearing at the appellate stage.

The judgment reported at **(2019) 18 SCC 401 (*63 Moons Technologies Limited (formerly known as Financial Technologies India Limited) & Ors. v. Union of India & Ors.*)** supports the petitioner's case that a breach of statutory provisions involving violation of the principles of natural justice cannot be cured at the appellate stage, as such violation goes to the root of the matter.

I find substance in the submissions advanced on behalf of the petitioner that the denial of an opportunity of personal hearing before the Adjudicating Authority has caused serious prejudice, particularly in view of the mandatory requirement under Section 75(4) of the said Act. It is not necessary for the petitioner to demonstrate specific prejudice resulting from such non-compliance. This view is supported by the judgment of the Rajasthan High Court reported at **2023 SCC OnLine Raj 5541 : (2023) 74 GSTL 325 (*Chandni Crafts v. Union of India*)** and the judgment of this Court in **MAT 205 of 2023 with IA No. CAN 1 of 2023 (*Goutam Bhowmik v. State of West Bengal & Ors.*)**.

In view of the aforesaid, I am inclined to set aside the order dated March 27, 2023 passed by the Adjudicating Authority as well as the appellate order dated October 30, 2023. Consequently, all subsequent steps taken by the respondent authorities pursuant thereto are also set aside.

The matter is remanded to the Adjudicating Authority for fresh adjudication after affording the petitioner an opportunity of personal hearing, which shall be completed within a period of 30 days from the date of communication of this order.

The amount deposited by the petitioner in connection with the appeal shall be refunded within a period of two weeks from the date of communication of this order.

Accordingly, **WPA 22932 of 2024** stands **allowed**.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, *J.*)