



In the case of ***Goutam Bhowmik -Vs.- The State of West Bengal & Ors***, Hon'ble Calcutta High Court issued a verdict elucidating the obligatory stipulations for proceedings under the CGST Act, 2017. In the present case, the court observed that the show cause notice issued under Section 73 of the CGST Act, 2017, lacked specific details such as the date, time, or place of the hearing, and did not indicate any intention to provide a personal hearing. The court determined that this exclusion constituted a breach of Section 75(4) of the WBGST/CGST Act, 2017.

This judgment also stresses on the perspective that, despite the availability of alternative remedies, a court may consider a writ petition based on the specific circumstances of each case.

D/L
Item No. 52
09.01.2024
KOLE

A.F.R.

**MAT 205 of 2023
With
IA No. CAN 1 of 2023**

**Goutam Bhowmik
-Vs.-
The State of West Bengal & Ors.**

*Mr. Himangshu Kumar Ray,
Mr. Abhilash Mittal,*

...for the appellant.

*Mr. Subir Kumar Saha, Ld. AGP,
Mr. Dilip Kumar Agarwal,*

...for the State respondents.

1. Heard Sri Himangshu Kumar Ray, learned Advocate for the appellant/petitioner and Mr. Subir Kumar Saha,



learned AGP and Mr. Dilip Kumar Agarwal, learned Advocates for the State.

2. This intra court appeal has been filed praying to set aside the judgment and order dated 18.11.2023 in WPA 1866 of 2023 (Goutam Bhowmik-vs.-The State of West Bengal & Ors.) passed by the learned Single Judge. In the writ petition the appellant/petitioner has prayed for a writ in the nature of certiorari to quash the order dated 25.03.2021 under Section 73 of the WBGST/CGST Act, 2017 passed for the tax period/Financial Year appearing from April 2018-March 2019. The writ petition was dismissed by the learned Single Judge. Aggrieved with the aforesaid judgment and



order of the learned Single Judge, the appellant/petitioner has filed the present appeal.

3. Learned Advocate for the appellant/petitioner submits that neither any show cause notice as contemplated under Section 73 was served upon the petitioner nor any opportunity of hearing was afforded to the petitioner as contemplated under Section 75 (4) of the Act, before taking the impugned adverse decision by means of the impugned order. He, therefore, submits that the impugned assessment order was passed in breach of provisions of Section 73 and Section 75(4) of the Act, 2017 and also in breach of principles of natural justice. He further submits that the appellant/petitioner has a good case but he has not been afforded any opportunity of hearing by the proper officer which has resulted in illegal creation of the impugned demand by the impugned order under Section 73 of the Act of 2017.

4. Learned Advocate for the respondents submits that the notice under Section 73 of the Act, 2017 was issued to the petitioner but he chosen not to submit any reply and as such the proper officer has not committed any error of law to create to pass the impugned order under Section 73 of the Act 2017. He further submits that against the order under Section 73 of the Act, the assessee was having remedy of statutory appeal under Section 107 of the Act 2017 but without exhausting that remedy the writ petitioner had filed the writ petition and after being unsuccessful, he has filed



the present appeal. Therefore, the appeal deserves to be dismissed on the ground of alternative remedy.

5. We have carefully considered the submissions of learned Advocates for the parties and perused the record of the appeal.

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. 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. 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-vs.-Commissioner of Commercial-tax**, reported in **(2022) 59 GSTL 394 (Allahabad)**, 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. 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 decision is contemplated against such person. 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.

12. So far as the objection raised by learned Advocate for the respondents with regard to the availability of statutory remedy of the appeal under Section 107 of the WBGST/CGST Act, 2017 is concerned, we find that once the order has been passed by the proper officer in complete breach of statutory mandate contained in Section 75(4) of the WBGST Act, availability of alternative remedy on facts of the case would not be a complete bar while entertaining the writ petition under Article 226 of the Constitution of India.

13. Article 226 of the Constitution of India confers very wide powers on High Courts to issue writs but this power is discretionary and the High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. It is a rule of



discretion and not rule of compulsion or the rule of law. Even though there may be an alternative remedy, yet the High Court may entertain a writ petition depending upon facts of each case. It is neither possible nor desirable to lay down inflexible rule to be applied rigidly for entertaining a writ petition. Some exceptions to the rule of alternative remedy as settled by Hon'ble Supreme Court are as under:-

(i) Where there is complete lack of jurisdiction in the officer or authority to take the action or to pass the order impugned.

(ii) Where vires of an Act, Rules, Notification or any of its provisions has been challenged.

(iii) **Where an order prejudicial to the writ petitioner has been passed in total violation of principles of natural justice.**

(iv) Where enforcement of any fundamental right is sought by the petitioner.

(v) **Where procedure required for decision has not been adopted.**

(vi) Where Tax is levied without authority of law.

(vii) Where decision is an abuse of process of law.

(viii) Where palpable injustice shall be caused to the petitioner, if he is forced to adopt remedies under the statute for enforcement of any fundamental rights guaranteed under the Constitution of India.

(ix) Where a decision or policy decision has already been taken by the Government rendering the remedy of appeal to be an empty formality or futile attempt.



(x) Where there is no factual dispute but merely a pure question of law or interpretation is involved.

(xi) Where show cause notice has been issued with preconceived or premeditated or closed mind.

14. The above principles are supported by the law laid down by Hon'ble Supreme Court in the cases of *Himmatlal Harilal Mehta v. State of Madhya Pradesh*, AIR 1954 SC 403, *Collector of Customs v. Ramchand Sobhraj Wadhwani*, AIR 1961 SC 1506, *Collector Of Customs & Excise, vs A. S. Bava*, AIR 1968 SC 13, *Dr. Smt. Kuntesh Gupta vs Management Of Hindu Kanya Mahavidyalaya*, *L.K. Verma v. HMT Ltd. and anr.*, (2006) 2 SCC 269, *Paras 13 and 20, M.P. State Agro Industries Development Corpn. Ltd. & Anr. vs. Jahan Khan* (2007) 10 SCC 88 para 12, *Dhampur Sugar Mills Ltd. v. State of U.P. and others* (2007) 8 SCC 338, *BCPP Mazdoor Sangh Vs. NTPC* (2007) 14 SCC 234 (para 19), *Rajasthan State Electricity Board v. Union of India*, (2008) 5 SCC 632 (para 3), *Mumtaz Post Graduate Degree College Vs. University of Lucknow*, (2009) 2 SCC 630 (para 22 and 23), *Godrej Sara Lee Limited v. Assistant Commissioner (AA)*, (2009) 14 SCC 338 (para 22 and 23), *Union of India v. Mangal Textile Mills (I) (P) Ltd.*, (2010) 14 SCC 553 (paras 6,7,10 and 12), *Union of India v. Tania Construction (P) Ltd.*, (2011) 5 SCC 697, *Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill*, (2012) 2 SCC 108 (paras 79,80,81,82,86,87 and 88), *State of M.P. Vs. Sanjay Nagaich* (2013) 7 SCC 25 (para 34,35,38,39), *State of H.P.*



vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499 (para 11 to 19), *Star Paper Mills Ltd. Vs. State of U.P. and others, JT* (2006) 12 SC 92, *State of Tripura vs. Manoranjan Chakraborty*, (2001) 10 SCC 740 para 4; *Paradip Port Trust vs Sales Tax Officer and Ors.* (1998) 4 SCC 90, *Feldohf Auto & Gas Industries Ltd. Vs. Union of India* (1998) 9 SCC 710; *Isha Beebi Vs. Tax Recovery Officer* (1976) 1 SCC 70 (para 5); *Whirlpool Corporation Vs. Registrar of Trademarks* (1998) 8 SCC 1; *Guruguayur Devasworn Managing Committee Vs C.K. Rajan* (2003) 7 SCC 546 (para 67, 68), *Oryx Fisheries Pvt. Ltd. Vs. Union of India & Others* (2010) 13 SCC 427 (Paras 27 to 38), *Mangilal Vs. State of M.P.* (1994) 4 SCC 564 (Para 6), *Siemens Ltd. VS. State of Maharashtra* (2006) 12 SCC 33 (para 9 & 11), *Kaikhosrou (Chick) Kavasji Framji of Indian Inhabitant Vs. Union of India* (2019) 20 SCC 705 (para 59) and judgments of this Court in Writ Tax No. 255 of 2012 (*M/s Shree Bhawani Paper Mills Ltd. Vs. State Of U.P. and Another*) decided on 10.09.2015, *M/s. Rapti Commissions Agency Vs. Union of India* (2010) 1 AllLJ. 710 :(2009) 244 ELT 8 and *Oudh Sugar Mill Vs. State of U.P.* (2015) 3 AllLJ 774 (para 27).

15. For all of the reasons aforesaid, the impugned judgment and order dated 18.11.2023 in WPA No. 1866 of 2023 (*Goutam Bhowmik-vs.-The State of West Bengal & Ors.*) passed by the learned Single Judge cannot be sustainable and is hereby set aside. The impugned order dated 25.03.2021 for the period from April 2018 to March 2019 passed by the Assistant Commissioner of State Tax



(GST), Jalpaiguri Charge under Section 73 of the WBGST Act, 2017 and CGST Act, 2017, cannot be sustained and is hereby quashed. The present appeal MAT No. 205 of 2023 and the writ petition being WPA No. 1866 of 2023 filed by the appellant/petitioner are hereby allowed. Matter is remitted back to the proper officer/Assistant Commissioner of State Tax (GST) Jalpaiguri charge to pass an order afresh in accordance with law under Section 73 of the WBGST Act, 2017/CGST Act, 2017, after affording reasonable opportunity of personal hearing to the appellant/petitioner. The petitioner shall submit reply to the show cause notice before the concerned Assistant Commissioner within three weeks from today along with a certified copy of this order.

16. IA CAN 1 of 2023 is disposed of.

17. Urgent certified copy of this order, if applied for, be supplied to the learned Counsel for the respective parties.

(Surya Prakash Kesarwani, J.)

(Rai Chattopadhyay, J.)

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