08.10.26
14 Ct. No.10
AGM

WPA 16965 of 2026

Shankar Prasad Gupta
vs.
The State of West Bengal & Ors.

Mr. Himangshu Kumar Ray.
Mr. Saptak Sanyal.
Mr. Subhasis Podder.
Mr. Sushant Bagaria.
Ms. Shiwani Shaw.
....for the petitioner

Mr. Ram Chandra Agarwal.
Mr. Mantu Kumar Shaw.
....for the State-respondents

1. Affidavit of service filed in Court today be kept with the record.

2. The present writ petition has been filed challenging inter alia, the legality and validity of the ex-parte adjudication order dated 06.03.2024 passed by the respondent No. 3 under Section 73 of the West Bengal Goods and Services Tax Act (hereinafter referred to as the said 'WBGST Act') and the Central Goods and Services Tax Act, 2017(hereinafter referred to as the said 'CGST Act').

3. Learned counsel for the petitioner submits as follows;

i. That a show cause notice in Form DRC 01 dated 01.11.2023 has been issued to the petitioner demanding tax, interest and penalty.

ii. The said notice has been uploaded on the GST portal under the tab 'Additional Notice and Orders'. Due to this, the petitioner could not submit reply.

iii. The adjudicating authority passed an ex parte order of adjudication dated 06.03.2024 which was accordingly uploaded in the 'Additional Notices and Orders' tab.

iv. The petitioner came to know about the passing of the order of adjudication dated 06.03.2024 only after receiving a recovery notice from Bank on 02.04.2026.

v. That the entire proceedings and the impugned order are contrary to law and have been passed in violations of principles of natural justice and without due compliance with the procedure prescribed under the said Act.

4. Learned counsel appearing for the State respondents vehemently opposes the submissions made by the petitioner and submits that the petitioner did not file any reply. The petitioner did not make any request for an opportunity of personal hearing, thus the GST Department proceeded on the basis of the reply filed by the petitioner.

5. It is further submitted that there is no specific rule prescribed under the statute to

provide any opportunity of hearing to the petitioner prior to the passing of an order of adjudication.

6. In this context the petitioner places reliance upon paragraph nos. 7 to 9 of a Division Bench Judgment in **Goutam Bhowmik –v.- State of West Bengal** reported in **(2024) 158 taxmann. Com 399 (Calcutta)**, which are reproduced below:

> *"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 dated 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."*

7. From the plain reading of Section 75(4) of the CGST Act, 2017 it clearly envisages 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.

8. In the present case, the petitioner was denied of personal hearing which is evident from the summary of show cause notice dated 01.11.2023.

9. Having heard the parties and upon perusing the records made available this Court observes as follows;

i. The petitioner has been able to make out a prima facie case.

ii. The fact that show cause notice and adjudication order have been uploaded only under the 'tab Additional Notice and Orders' and no separate intimation has been given therefore, the petitioner could not submit the reply.

10. In view of the above this Court directs as follows:

a. The adjudication order dated 06.03.2024, consequential recovery notice are hereby quashed and set aside.

b. The petitioner is directed to file a comprehensive reply before the authority

concerned to the show cause notice dated 1.11.2023 within a period of three weeks from the date of communication of this order.

c. Respondent no. 3 is directed to revisit the issue by considering the reply filed by the petitioner.

d. Respondent no. 3 shall afford an opportunity of personal hearing to the petitioner and pass a fresh reasoned adjudication order in accordance with law within 12 weeks from date. Such decision shall be communicated to the petitioner within a week thereafter.

11. With the above observations and directions this writ petition stands disposed of.

12. Since no affidavit in opposition has been called for, the allegations contained in the writ petition are deemed to have been denied and not admitted.

13. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)