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Ct. No.10
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WPA 16969 of 2026

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

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

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

Ms. Soni Ojha
..... for the respondent no. 5

1. Affidavit of service filed in Court today by the petitioner is taken on record.

2. The petitioner is engaged as tentile prouning and trading under the name and style of "G. S. Fabrics" and the petitioner is proprietorship concern duly registered under the Central Goods and Services Tax Act, 2017 (hereinafter "CGST Act) and the West Bengal Goods and Services Tax Act, 2017(hereinafter referred to as WBGST Act).

3. The issue involved herein is whether the ex parte assessment order dated 10.08.2023 passed under Section 73 of the CGST Act/WBGST Act is sustainable in law, particularly in light of circular of 183/15/2022-GST Dated 27th December, 2022

stating to reconciliation of ITC between FORM GSTR-3B and FORM GSTR-2A.

4. The learned Counsel appearing for the petitioner submits that a show-cause notice was issued on 13.06.2023 for the period of July, 2017 to March 2018 by raising a demand of Rs. 8,11,565/-, on account of alleged mismatched of ITC, including Tax, interest and penalty.

5. The said demand is contrary to Circular No. 183/15/2022-GST dated 27th December, 2022. Reliance is placed upon paragraph 4 of the said circular, "that before raising any demand on account of ITC mismatch, the proper officer is mandated to" which is reproduced below:

> "***The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:***
> ***(i) That he is in possession of a tax invoice or debit note issued by the supplier or such other taxpaying documents;***
> ***(ii) That he has received the goods or services or both;***
> ***(iii) That he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier***".

The said procedure was not followed in the present case.

6. It is submitted that since the show-cause notice was not served upon the petitioner. As a result the petitioner had no knowledge of the same and were unable to file a reply. Consequently an ex parte order of adjudication order dated 10.08.2023 was passed by the respondent no.4.

7. In this context petitioner relies upon a Division Bench judgment in the case of Goutam Bhowmik vs. State of West Bengal & Ors., reported in (2024) 158 taxmann.com. 399 (Calcutta), regarding personal hearing before passing of an adverse order.

8. It is therefore contended that the adjudication order is ex facie illegal, in violation of principles of natural justice, and a liable to be set aside.

9. Learned Counsel appearing for the respondent authorities vehemently opposes the submission of the petitioner and submits that no illegality and/or irregularity has been committed by the respondent authorities. Learned counsel further submits that as per Section 169(1)(d) of the CGST/WBGST Act, 2017 uploading any notices or orders in the common portal constitutes valid service. In the present case, the show-cause notice was duly uploaded on the portal. Since the petitioner did not file any reply to the show-cause notice, the adjudicating authority was justified in passing the ex parte order.

10. It is further submitted that an opportunity of personal hearing was afforded to the petitioner which was not availed. Therefore, the petitioners cannot now claim violation of natural justice.

11. After hearing the rival contention of the parties and upon perusal of the materials on record, this Court is of the view that the petitioner has been able to make out a *prima facie* case warranting interference at this stage.

12. This Court has taken judicial note of the screenshot of the show-cause notice at pages 71 to 73 of the writ petition and also the consequential order passed ex parte by the respondent authorities.

13. It appears that the impugned orders have been passed without adhering to the procedure prescribed in paragraph 4 of circular no. 183/15/2022-GST dated 27th December, 2022. The mandate of the said circular requires the proper officer to first seeks details and verify fulfillment of the conditions of Section 16 before confirming any demand on account of ITC mismatch. Such exercise does not appear to have been undertaken.

14. In view of the above observations, the writ petition is disposed of on the following grounds:

a. The order of adjudication dated 10.08.2023 and Recovery Notice dated 27.02.2026 are hereby quashed and set aside.

b. The petitioner is directed to file a comprehensive representation before respondent no. 4 within four weeks from date along with all supporting documents.

c. Respondent no. 4 shall consider and dispose of the said representation in light of circular no. 183/15/2022 GST dated 27.12.2022 by passing a reasoned order in accordance with law after affording a reasonable opportunity of hearing to the petitioner. Such decision shall be communicated to the petitioners within a week thereafter.

d. The petitioner shall not seek any unnecessary adjournments before the adjudicating authority.

e. The adjudicating authority shall be at liberty to take an independent decision on merits without being influenced by any observations in this order.

15. With the aforesaid observations and directions, the writ petition is disposed of without going into the merits of the case.

(Smita Das De, J.)