

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
CIRCUIT BENCH AT JALPAIGURI**

BEFORE:

The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA 1864 of 2023

PIKU SAHA

Vs.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Himangshu Kr. Roy, Advocate
Mr. Abhilash Mittal, Advocate

For the State : Mr. Subir Kr. Saha, Advocate

Reserved on : 20.09.2023

Judgment : 18.11.2023

Ravi Krishan Kapur, J. :-

1. The grievance of the petitioner is directed against an intimation of tax liability read with a show cause notice issued under section 74 of the West Bengal Goods and Services Tax Act, 2017 (the Act), the final order dated 9 December, 2022 passed under section 74 of the Act and the consequential notice of bank attachment dated 22 June, 2023.
2. Briefly, on 16 June 2022 the respondent no 4 issued an intimation of tax ascertained as being payable u/s 74(5) in Form GST-DRC-01A upon the petitioner for the period 2021-2022 through email and uploaded the same in the category of "Additional Notice and Orders" in

the GST portal. Thereafter, on 1 September, 2022 the petitioner was issued an unsigned show cause notice under section 74 and a summary Show Cause Notice in FORM GST DRC-01 with annexures for the period 2021-22 on the ground that there was a mismatch between GSTR7 and GSTR 3B filed by the petitioner and the same was also intimated through e-mail. It is alleged that the said notice had been uploaded in the category of “Additional Notice and Orders” in the GST portal. It is further alleged that an unsigned notice was issued without verification of returns under section 61 of the Act and in violation of Rule 26(3) of the CGST Rules.

3. The primary grievance of the petitioner in respect of the impugned proceedings and notices is that prior to issuance of intimation of tax in FORM GST DRC-01, the respondent authorities failed to verify the returns as contemplated under section 61 of the Act. The intimation of tax as communicated to the petitioner was unsigned and thus invalid in law. There has also been violation of Rule 26(3) of the WBGST Rules, 2017. Moreover, the intimation of tax in FORM GST DRC-01 has been wrongly uploaded in the Online Portal of the petitioner under the heading “Additional Notice and Orders”. Hence, the same cannot be construed as valid service upon the petitioner. In any event, the intimation of tax, the impugned show cause notice and the impugned order in final form under section 74 of the Act has been passed without granting an opportunity of personal hearing to the petitioner and is in violation of the principles of natural justice.

4. Section 74 of the Act provides as follows:

74. (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

5. On a reading of the aforesaid section, it is *ex facie* evident that verification under section 61 of the Act is neither a pre-condition nor a *sine qua non* for initiation of proceedings under section 74 of the Act. The opening words “*where it appears to the proper officer*” clarifies that it is the appropriate officer who has to form a *prima facie* opinion prior to initiation of proceedings. In this case, from the records itself it appears that there is an apparent mismatch between FORM GSTR-7 and FORM GSTR-3B filed by the petitioner. The plea of the notices not being uploaded in the correct portal is also without basis. Admittedly, the notices have been uploaded on the GST Online portal under the heading “Additional Notices and Orders”. Both the said links are accessible by the petitioner and it is now incumbent on the petitioner or any authorized person being a registered tax payer to check each of

the links and ascertain whether any order or notices have been uploaded in the portal or not. The online portal is one and the same. The headings may be different. In such circumstances, it is absurd to contend that the petitioner checked the link under the category “Notices” but has failed to check the link under the category “Additional Notices and Orders”. The online portal is accessible or deemed to be accessible to every assessee and their authorised representative. Moreover, contemporaneous knowledge of such notices or intimation of tax had also been forwarded to the petitioner by e-mail. Thus, the petitioner was duly intimated in multiple modes. In such circumstances, the plea of non-receipt of notice to the petitioner is untenable.

6. There is also no merit in the contention that the notices issued to the petitioner were neither signed nor authenticated. Any notice issued and uploaded in the GST Portal is automatically authenticated by way of digital signatures. The name and designation of the officer is usually reflected therein. In any event, there are adequate safeguards in section 74(9) of the Act itself which provide for an opportunity to every assessee to submit a representation to the proper officer in case of any grievance.
7. In this case, the petitioner despite having received notice as regards the intimation of tax gst DRC-01A and the subsequent show cause notice failed to respond to the same. An assessee cannot choose to ignore all notices and steps taken by the respondent authorities who

are now bound to act in a time bound manner under the Act and thereafter take the plea of natural justice. The petitioner has deliberately chosen to act as a silent spectator and permit the proceedings initiated by the respondent authorities to attain finality. The petitioner though entitled has also chosen not to furnish any representation or contest the proceedings contemporaneously. In such circumstances, there are no grounds made out to interfere with the impugned orders and the steps taken pursuant thereto.

8. The unreported decision cited in *Prabhu Dayal Jajoo vs. The Deputy Commissioner, State Tax, Budget Budget Charge and Ors.* in MAT 1020 of 2023 is inapposite. In this case, the show cause notice had been uploaded on a different portal and this fact was unknown to the petitioner. However, in the facts of this case the impugned notices had been uploaded in the same portal under the link Additional Notices and Orders which the petitioner was deemed to have knowledge of. Similarly, the decision in *Bharat Mint and Allied Chemicals vs. Commissioner of Commercial Tax [2022]* 136 Taxmann.com 275 (Allahabad) does not consider the true import and purport of section 75(4) of the Act *vis a vis* section 74. The said decision is also distinguishable inasmuch as the Court had come to a finding that no opportunity of hearing has been afforded to the petitioner.
9. In this background, there is no illegality nor perversity nor infraction of law nor procedural impropriety which warrants any interference with any of the impugned orders and steps taken pursuant thereto.

10. For the above reasons, WPA 1864 of 2023 stands dismissed. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)