

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

WPA 1735 of 2025

M/s. N. Goswamin Associates
Vs.

Assistant Commissioner of State Tax
Jalpaiguri Charge & Ors.

Mr. Antik Majumder
Mr. Gopal Sah

... For the petitioner.

Mr. Pradip Sarkar
Mr. Pretom Das

... For the State.

1. The present writ petition has been filed challenging the order dated 29th December, 2023, passed under Section 73(9) of the WBGST/CGST Act, 2017 (hereinafter referred to as the 'said Act') for the tax period 2017-18.
2. Having heard the learned advocates appearing for the respective parties, it would transpire that originally on 19th September, 2023 a show cause notice was issued in Form GSTDRC 01 under Section 73 of the said Act in respect of the tax period July, 2017 to March, 2018 bearing reference no. ZD1909230309814.
3. Although, as per the above show cause, the petitioner was required to submit its response by 18th October, 2023, the show cause did not spell out the date on which opportunity of hearing

would be offered.

4. Mr. Sarkar, learned advocate representing the State has, however, placed before this Court a bunch of documents and would submit that immediately upon issuance of the show cause as noted above since it was detected that there was certain additional liabilities a fresh show cause in Form GSTDRC01 of even date for the tax period July, 2017 to March, 2018 was issued vide reference no. ZD1909230313477.
5. By such show cause, the petitioner was required to respond to the same by 19th October, 2023. Incidentally, the said show cause also did not provide for the date when the personal hearing shall be offered.
6. It is, however, the petitioner's case that the petitioner was unwell and had stopped conducting any business. The petitioner, had, however, by filing a response in Form GST DRC 06 dated 31st October, 2023 sought for a personal hearing. Admittedly, when such response was filed, the time to file response had already expired.
7. Be that as it may, as on the date of filing the response, no order under Section 73(9) of the said Act was passed.
8. Let it be recorded that a reminder letter was issued on 16th October, 2023, which, in fact,

prompted the petitioner to file response. It is also a matter of records that subsequently on 29th December, 2023 an order under Section 73(9) of the said Act was passed. The petitioner claims that the aforesaid order was passed without affording opportunity of hearing to the petitioner. Mr. Sarkar, has, however, by placing before this Court the communication dated 21st December, 2023 claims to have intimated the petitioner with regard to previous developments and the additional liability. Such document was incidentally forwarded to the petitioner by post. The aforesaid document, admittedly, was not available on the portal. Mr. Sarkar acknowledges the fact that in the instant case no opportunity of hearing was given. He, however, explained since the petitioner did not avail the opportunity to respond to the show cause in Form GST DRC 01 within time no further opportunity was necessary and accordingly proceeding was closed. In this context, I find that having regard to the provisions contained in Section 75(4) of the said Act, it was the obligation of the proper officer irrespective of whether any response was filed by the petitioner, to provide an opportunity of hearing to the petitioner/assessee before determination of liability since, in the instant case, an adverse

decision was contemplated.

9. Having regard to the above, I have no doubt in my mind that there has been infraction of Section 75(4) of the said Act. Thus, on such technical ground I do hereby set aside the order dated 29th December, 2023 passed under Section 73(9) of the said Act.

10. At the same time, noting from the parties that the petitioner's registration at his request has been cancelled and since, the order has been set aside on technical ground, I direct the proper officer to restore the registration only for the purpose of disposal of show cause proceeding as without restoration of the registration, the petitioner shall not be able to access the portal.

11. It is also made clear that the portal shall remain active for a period of 90 days beyond the date of the order to be passed under Section 73(9) of the said Act for the purpose of taking recourse to such order if necessary.

12. The petitioner shall, however, be at liberty to file its response to the later show cause within 15 days from the date of intimation by the proper officer that the portal has been activated. The respondents shall be entitled to proceed and hear out the petitioner afresh and decide the cause upon giving an opportunity of hearing to the

petitioner in accordance with law.

13. With the above observations and directions the writ petition is disposed of.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)