

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 14092 of 2024

**Mitali Saha
Versus
State of West Bengal & Ors.**

For the petitioner : Mr. Himangshu Kumar Roy
Mr. P.K.Ray
Mr. S. Podder
Ms. S.Shaw

For the respondents : Mr. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

Heard on : 8th July, 2024

Judgment on : 8th July, 2024.

Raja Basu Chowdhury, J:

1. Affidavits of service filed in Court today is retained with the record.
2. Although, the present writ petition has been filed inter alia, challenging the notifications dated 5th July 2022 and 31st March 2023 issued under Section 168A of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act"), at the very outset Mr. Ray, learned advocate appearing for the petitioner submits that he does

not want to proceed with the said challenge. Since the petition is now confined to the challenge of the show cause notice issued under Section 73 of the said Act dated 6th April 2023 and the order dated 6th December 2023 passed under Section 73(9) of the said Act in respect of the tax period July 2017-March 2018, the same is taken up for consideration.

3. Mr. Ray, by placing before this Court the show cause notice and the adjudication order, has tried to impress upon this Court that since, neither the show cause notice nor the adjudication order issued under Section 73 and Section 73 (9) of the said Act, had been uploaded in the “*view notices and orders*” section of the portal, the uploading of the notice dated 6th April, 2023 and the order dated 6th December, 2023, in the portal, in other section does not constitute service of such notice or order on the petitioner.
4. According to him, the show cause notice issued under Section 73 of the said Act and the order issued under Section 73(9) of the said Act were in fact uploaded on the “*view additional notices and orders*” section of the portal. The complex nature of the portal, prior to the same being redesigned had made it extremely difficult for the registered tax payers to access information from the portal. Taking into consideration the above, the Dash Board of the portal had also been redesigned. For reasons as aforesaid, the petitioner had been denied the opportunity to appropriately respond to the same and accordingly an ex parte order had been passed. He submits that in

the facts and circumstances of the instant case, the adjudication order should be set aside, since the same had been passed in violation of principles of natural justice.

5. Further, by drawing attention of this Court to the notice in Form GST DRC – 13 dated 6th May 2024 it is submitted that the respondents had in pursuance to the ex parte order purported to attach the petitioner's bank account. The aforesaid fact had come to the light from the disclosure made by the petitioner's banker. Copy of the aforesaid notice was also not forwarded to the petitioner.
6. Mr. Ray, by placing before this Court a letter dated 28th May 2024 issued by the Assistant Commissioner, Raiganj Charge, submits that by the aforesaid communication, the attachment order on the petitioner's bank account had since, been withdrawn.
7. Mr. Siddiqui, learned advocate appearing for the respondents, on the other hand by drawing attention of this Court to the email communications dated 28th July 2022, 21st October 2022 and 6th April 2023 submits that the petitioner was repeatedly informed with regard to service of notices including the service of show cause notice under Section 73 of the said Act. By referring to the aforesaid email communications he submits that the emails categorically record the exact location in the portal where the said notice is available. If the petitioner had chosen to overlook the same, the respondents cannot be made responsible thereof. He, however, acknowledges the fact that the respondents had by a

communication in writing dated 28th May 2024 withdrawn the order of attachment attaching the petitioner's bank account.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. Admittedly, in this case it is noticed that the show cause notice issued under Section 73 of the said Act was not uploaded in the "*view notices and orders*" section of the portal. It is, however, not in doubt that by email communications the petitioner was informed with regard to the exact location of the show cause notice on the portal. Such fact would corroborate from the email communications which remains uncontroverted. Be that as it may, since there was some confusion with regard to uploading of the show cause and the order and especially taking into consideration the fact that the dashboard of the portal has been re-designed, I am of the view that the petitioner should be permitted to challenge the aforesaid adjudication order dated 6th December 2023 passed under Section 73(9) of the said Act before the appellate authority.
10. In the event, the petitioner approaches the appellate authority within 30 days from date and files an appeal along with an application for condonation of delay, the appellate authority, by condoning the delay shall hear out and dispose of the appeal on merits by passing a reasoned order, within a period of 12 weeks from date of filing of the said appeal upon giving an opportunity of hearing to the petitioner, subject to the petitioner complying with

the requirement for pre-deposit, as is required for maintaining an appeal under Section 107 of the said Act.

11. With the above observations and directions, the writ petition being WPA 14092 of 2024 is disposed of.
12. There shall be no order as to costs.
13. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court).

