

GST - Section 75 - show cause notice for demand of tax and penalty for non-payment of GST - challenge to the impugned orders having been passed without giving opportunity of personal hearing and in violation of the statutory requirements - HELD - sub-section 4 of the Section 75 of the CGST Act makes it clear that whenever an assessee, chargeable with tax and penalty makes a request in writing for opportunity of hearing, such an opportunity should be granted to him - admittedly though a request was made for personal hearing, however, without granting the same the impugned orders have been passed - the impugned order have been passed in violation of the statutory requirements and therefore, quashed - the matter is remanded back to respondent to proceed with the matter strictly in accordance with law - answered in favour of petitioner

SLH: Notice for demand tax and penalty cannot to adjudicated without giving opportunity of personal hearing (Ref: Section 75 of the CGST Act)

<i>Relevant Sections</i>
Section 73 & Section 75

2020-VIL-128-ORI

ORISSA HIGH COURT

WP(C) 386/2020

Date: 09.01.2020

1. M/s SERAJUDDIN AND CO

2. SERAJ YUSHA

Vs

1. UNION OF INDIA

2. STATE OF ODISHA

3. COMMISSONER OF CT, ODISHA

4. STATE TAX OFFICER, CT AND GST CIRCLE, BARBIL

Bench

MR. JUSTICE BISWAJIT MOHANTY, MR. JUSTICE B. P. ROUTRAY

Heard Mr. Ashok Mohanty, learned Senior Advocate appearing for the petitioners and Mr. Sunil Mishra, learned Additional Standing Counsel appearing for the Commercial Tax-State.

According to Mr. Mohanty, a show cause notice dated 04.11.2019 vide Annexure-3 was issued to the petitioners under Section 73 of the OGST Act, 2017 for non-payment of OGST/CGST for the period June, 2018 to December, 2018 making two things clear. First, that the reply has to be submitted to the show cause notice by 04.12.2019 and secondly if the petitioner No.1 wishes to be heard in person before the case is adjudicated, the same should be intimated in writing. Upon receipt of show cause notice, vide letter dated 03.12.2019 under Annexure-4, the petitioner No.1 prayed for four weeks time to file the reply and further on 04.12.2019 also vide Annexure-4, the

petitioners intimated their wishes to be heard in person. However, without responding to the prayer of the petitioners for time and without giving them an opportunity of personal hearing, the impugned orders were passed on 09.12.2019 and 10.12.2019 vide Annexure-5 series, which are under challenge here.

In this context, Mr. Mohanty, learned Senior Advocate draws the attention of this Court to sub-sections 4 & 5 of Section 75 of the OGST Act, 2017 for short 'the Act'. According to him, as per sub-section 5 of Section 75 of "the Act", if sufficient cause is shown for grant of time, the proper officer should grant time. According to him, the petitioner No.1 in his letter dated 03.12.2019 under Annexure-4 has shown sufficient cause. Further even as per proviso to sub-section 5 of Section 75, such adjournment can also be granted for three times. In the instant case without passing any order on the prayer/petition for adjournment, the impugned orders under Annexure-5 series have been passed. Relying sub-section 4 of Section 75 of "the Act", he submits that whenever an assessee makes a request for granting an opportunity of hearing, the same should be given to him. In the present case, despite such request under Annexure-4, the impugned orders have been passed without giving such opportunity. Accordingly, he submits that there has been a violation of statutory requirements and this vitiates the entire decision-making process. For these reasons, the impugned orders should be set aside.

Mr. Mishra, learned Additional Standing Counsel, Commercial Taxes vehemently defends the impugned orders and submits that no illegality has been committed while passing the same. However, upon query, he does not dispute receipt of letter dated 3.12.2019 under Annexure-4 and Form GST DRC - 06 under Annexure-4 by the authorities.

A perusal of sub-section 4 of the Section 75 of "the Act" makes it clear that whenever an assessee, chargeable with tax and penalty makes a request in writing for opportunity of hearing, such an opportunity should be granted to him. Here, admittedly though a request was made on 4.12.2019 under Annexure-4 for personal hearing, however, without granting the same the impugned orders have been passed. Further, despite receipt of the request dated 3.12.2019 under Annexure-4 for grant of additional time for filing show cause, without passing any order on the same, the impugned orders have been passed.

In such background, we have no hesitation in coming to a conclusion that the impugned order under Annexure-5 Series have been passed in violation of the statutory requirements as indicated above. Therefore we quash the impugned orders and remand the matter back to State Tax Officer, CT & GST Circle, Barbil - opposite party no.4 to proceed with the matter strictly in accordance with law. The petitioners are also directed to cooperate in the proceeding.

The writ application is disposed of.

Issue urgent certified copy.

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