

## **Assessment Order not valid when essential details not mentioned in Show Cause Notice for personal hearing**

The Hon'ble Calcutta High Court in the case of ***Goutam Bhowmik v. State of West Bengal [MAT 205 of 2023 dated January 9, 2024]*** allowed the writ petition and held that the assessment order passed by Proper Officer is not valid when no proper opportunity of hearing is afforded to the Assessee as no essential details have been mentioned in the Show Cause Notice for personal hearing.

### **Facts:**

Goutam Bhowmik ("**the Appellant**") is a proprietorship concern engaged in the trade of Timber. The Revenue Department ("**the Respondent**") issued a Notice dated December 11, 2020 under Section 73(5) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") on the ground that there was a mismatch between Form GSTR-7 and Form GSTR-3B. A Show Cause Notice dated January 15, 2021 ("**the SCN**") under Section 73 of the CGST Act. Thereafter, the order dated March 25, 2021 ("**the Order**") was passed by the Respondent, thereby creating tax liability. Aggrieved by the Impugned Order, the Appellant filed an appeal before the Hon'ble Calcutta High Court vide judgement dated November 18, 2023 ("**the Impugned Judgement**").

Aggrieved by the Impugned Judgement, the Appellant filed an intra-court appeal for setting aside the Impugned Judgement.

### **Issue:**

Whether the Assessment Order is valid when essential details are not mentioned in Show Cause Notice for personal hearing?

### **Held:**

The Hon'ble Calcutta High Court in the case of **MAT 205 of 2023** held as under:

- Observed that, Article 226 of the Constitution of India confers wide powers to the High Court to issue writ. However, the power is discretionary in nature. Also, even if alternative remedy exists, yet the High Court may entertain the writ petition if there is a complete lack of jurisdiction in the officer or authority to take action or pass orders, where the vires of an Act, Rules, Notification or any of its provisions are challenged, where enforcement of the fundamental rights is sought by the Petitioner, where procedure required for decision has not been adopted, where tax is levied without any authority of law, where decision is an abuse of process of law, where palpable injustice would be caused to the Petitioner, where the Petitioner is forced to adopt remedies under the statute for enforcement of any fundamental rights, where decision has already been taken by the Government rendering the remedy of appeal to be an empty formality or futile attempt, where pure question of law or interpretation is involved or where show cause notice has been issued with pre-conceived or premediated closed mind.
- Noted that, as per Section 73 of the CGST Act read with Section 75(4) of the CGST Act, the Proper Officer is bound to afford an opportunity of hearing where either a request in writing is received by him from the person who is charged with tax or penalty, or where any adverse decision is being contemplated against such person. Also, affording opportunity of hearing is a statutory mandate which cannot be violated by the Proper Officer, and if violated, the order passed by the Proper Officer cannot be sustained.
- Opined that, from perusal of the SCN, it is evident that the proper officer has declined to afford opportunity of hearing as the Appellant was not communicated any date, time and venue of hearing by the Respondent.
- Further Opined that, Impugned Order cannot be sustained and deserves to be quashed.

- Held that, Impugned Judgement and Impugned Order is set aside. Hence, the writ petition is allowed.
- Directed that, the matter be remitted back to proper officer to pass afresh order, after affording reasonable opportunity of hearing to the Petitioner.

### **Relevant Provision:**

#### **Section 75(4) of the CGST Act**

*“Section 75: General Provisions relating to determination of tax.*

*(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”*

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