09.07.2026
Ct. No.3
Sl. No.15
S.A.

Calcutta High Court
In the Circuit Bench at Jalpaiguri

W.P.A. 1031 of 2026

Rajat Dalmia
Vs.
Assistant Commissioner of Revenue & Ors.

Mr. Boudhayan Bhattacharyya
Ms. Stuti Bansal
Ms. Keya Kundu
Ms. Chayna Kumary
..for the petitioner
Mr. Jagriti Mishra
Ms. Mrinmayee Das
… for the State
Mr. Dilip Kumar Agarwal
Mr. Bishwa Raj Agarwal
...for respondent nos.4 & 6

Mr. Dilip Kumar Agarwal and Mr. Bishwa Raj Agarwal, learned advocates appear for Central Goods and Service Tax Authorities. Let their appointment be regularised.

A show cause notice in Form GST DRC-01 dated December 27, 2023, under Section 73 of the West Bengal Goods and Services Act, 2017, was issued to the petitioner, seeking a response within fourteen days from the date of the notice without specifying time, date and venue. The petitioner failed to respond.

Challenging these proceedings, the petitioner has filed this writ petition before this Court. The petitioner contends that he was not afforded a proper opportunity for a hearing by the authority and relies on the judgment reported at **(2024) SCC OnLine Cal 372 (Goutam Bhowmik v. State of West Bengal)**.

Mr. Jagriti Mishra, learned advocate appearing for the State, on the other hand, contends that a perusal of the order dated April 25, 2024 makes it clear that the petitioner was given an opportunity of hearing, he appeared before the authority and participated in the proceedings.

This Court is of the view that when a proceeding has been initiated by issuance of Form GST DRC-01, the petitioner was entitled to a further opportunity of hearing.

A perusal of the notice dated December 27, 2023, clearly indicates that the authority marked 'not applicable' in the columns for the date, time, and venue of the personal hearing. This suggests that the authority was not inclined to provide a personal hearing to the petitioner, leading to the assessment order dated April 25, 2024. The learned advocate for the petitioner has appropriately relied on the judgment in **Goutam Bhowmik's** case. The relevant part of the judgment is quoted below:

> "11. Considering the facts and circumstances of the present case, the provisions of Section 73 read with Section 75(4) of the WBGST/CGST Act, 2017, we are of the view that proper officer is bound to afford an opportunity of hearing where either a request in writing is received by him from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. To afford opportunity of hearing is a statutory mandate which cannot be violated by proper officer and in the event of violation the order passed by the proper officer cannot be sustained. Under the circumstances, the impugned order dated 25.03.2021 passed by the proper officer for the period April 2018 to March 2019 cannot be sustained and deserves to be quashed and the matter deserves to be remanded to the concerned Authority to pass an order afresh in accordance with law after affording reasonable opportunity of hearing to the petitioner/appellant."

In my view, the petitioner's case is covered by this decision.

If the initial action is bad, subsequent proceedings based on such action cannot be sustained. **[See: (2011) 5 SCC 142 (Chairman-Cum-Managing Director, Coal India Limited v. Ananta Saha)].**

The assessment was based on a show cause notice denying the petitioner the right to a personal hearing. Consequently, the proceedings based on the defective show cause notice must go.

Therefore, the show cause notice in Form GST DRC-01 dated December 27, 2023, the order of adjudication along with a Demand Notice in Form GST DRC-07 dated April 25, 2024, are set aside. The authority is permitted to initiate a fresh proceeding under Section 73 of the Act of 2017, giving an opportunity of hearing to the petitioner. Should a new proceeding be initiated, the limitation under Section 73(10) of the Act should commence from the date of the new notice.

Accordingly, **WPA 1031 of 2026** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)