(2021) 06 GAU CK 0084

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3024 Of 2021

Md. Alal Uddin — APPELLANT

Vs

Union Of India And 4 Ors — RESPONDENT

Date of Decision : 15-06-2021

Acts Referred:

Citation : (2021) 06 GAU CK 0084

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : M L Gope

Judgement

Heard Ms. N. Hawelia, learned counsel appearing for the writ petitioner. I have also heard Mr. S. C. Keyal, learned Standing Counsel, GST,

appearing for the official respondents.

This writ petition is directed against the ex-parte order dated 05.02.2020 passed by the Assistant Commissioner, CGST, Tezpur Division i.e. the

respondent No.3 imposing service tax liability upon the writ petitioner.

Ms. Hawelia has argued that her client, being a sub- contractor, is not at all liable to pay any service tax. However, since the petitioner did not receive

any notice from the respondent No.3 in connection with the above proceeding, the aforesaid facts could not be placed before the authority in the

correct perspective. The learned counsel for the petitioner has further submitted that her client is engaged in professional activities at a remote

location where postal notice could not be delivered and being aware of the said fact the authorities had also delivered the assessment order to the

petitioner by hand but had failed to serve notice of the proceeding upon him by means of hand delivery.

Mr. Keyal, learned Standing Counsel, GST, on the other hand, has raised strong objection as to the maintainability of the writ petition by submitting that

there is an alternative appellate remedy available to the petitioner. The learned Standing Counsel has, however, fairly submitted that the impugned

order was passed ex-parte i.e. without hearing the petitioner and to such extent, the writ petitioner may have a genuine grievance.

After hearing the submission of learned counsel for both sides and considering the facts and circumstances of the case imposing heavy financial

liability upon the writ petitioner, I am of the view that for the ends of justice,the respondent No.3 should be directed to pass a fresh order in this case

after giving an opportunity of being heard to the petitioner. The learned counsel for both the parties have also fairly agreed to the said recourse.

In view of the above, without commenting upon the merit of the impugned order, the impugned ex-parte order dated 05.02.2020 is hereby set aside.

Since the writ petitioner is already represented through his counsel, no further notice to appear before the respondent No 3 would be called for in this

case. The petitioner is given 15 days time with effect from today to submit his show-cause reply before the respondent No.3. If the show-cause reply

is submitted within 15 days from today, accompanied by a certified copy of this order, the same shall be taken on record and the respondent No.3 shall

thereafter fix a date of hearing in the matter. A fresh order, in accordance with law, be thereafter passed in the proceeding after giving reasonable

opportunity of being heard to the writ petitioner.

With the above observation, this writ petition stands disposed of.