

**Item No.7.**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

HEARD ON:11.08.2022

DELIVERED ON:11.08.2022

**CORAM:**

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. No.677 of 2022  
With  
I.A. No.CAN 1 of 2022**

**Prasanna Kumar Thakkar.  
Vs.  
Director, Directorate General of Goods and Services Tax Intelligence,  
Kolkata Zonal Unit & Ors.**

**Appearance:-**

**Mr. Debanuj Basu Thakur ..... for the appellant.**

**Mr. T. M. Siddique,  
Mr. Debasish Ghosh,  
Mr. D. Sahu ... for the respondents/State.**

**Mr. Bhaskar Prosad Banerjee,  
Mr. Tapan Bhanja ... for the respondent no.1**

**JUDGMENT**

***(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)***

1. The appellant has already put in the deficit court fees vide filing no.A-14993 in the department. In view thereof, the defect, as pointed out by the Additional Stamp Reporter stands removed.

2. This intra-Court appeal is directed against the order dated 16<sup>th</sup> November, 2021 passed in W.P.A. No.1474 of 2021. By the said order, the prayers sought for by the appellant / writ petitioner for grant of an interim order pending disposal of the writ petition has been negated.

3. We have elaborately heard the learned Advocates appearing for the parties. The learned Advocate appearing for the appellant would submit that the writ petition itself can be disposed of by this Court and the appellant / writ petitioner does not for the time being press the prayer (a) in the writ petition, which is for issuance of a writ of declaration that the provisions of Section 16(2)(c) and 16(2)(d) of the Goods and Services Tax Act, 2017 is unconstitutional, irrational and

arbitrary. The said submission is placed on record and the said prayer for declaration stands struck off.

4. The appellant is aggrieved by the action of the respondents in allegedly recovering tax without issuance of any order under Section 74(9) of the Central Goods and Services Tax Act, 2017. The appellant would further contend that without intimating the appellant the reason, the input tax credit ledger has been blocked. Therefore, it is submitted that the action initiated by the respondent department is arbitrary, unreasonable and against the provisions of the Act.

5. The learned standing counsel appearing for the respondent department, on the other hand, would submit that during the course of investigation, it is the appellant, who had voluntarily came forward to deposit a sum of Rs.40 lakhs and the appellant cannot be heard to say that it is the department, which has effected such recovery. Further, the learned standing counsel, on instruction, submitted that the department is in the process of issuing show cause notice and the same would be shortly issued.

6. Considering the above facts and circumstances, we are of the view that this appeal and the writ petition can be disposed of with the following directions:-

- (i) The respondent / department is directed to issue show cause notice to the appellant within 15 days from the date of receipt of the server copy of this order granting not less than 10 days from the date of receipt of the show cause notice to submit a reply by the appellant. It is thereafter the show cause notice shall be adjudicated and a speaking order be passed on merits and in accordance with law.
- (ii) Till the aforementioned exercise is completed, the respondent / department is directed not to initiate any coercive action against the appellant.
- (iii) With regard to the submission that the appellant's input tax credit ledger has been blocked, the same is an independent issue and cannot be considered in this writ petition. However, liberty is granted to the appellant to work out his remedies in accordance with law on the said issue.

7. The appeal along the connected application as well as the writ petition are disposed of.

8. No costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(T. S. SIVAGNANAM, J)**

I agree,

**(HIRANMAY BHATTACHARYYA, J.)**

NAREN/PALLAB (AR.C)