

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5013 of 2025

Sonali Roy
Versus
The State of West Bengal & Ors.

Mr. Pranit Bag
Mr. Abhik Chitta Kundu
... For the petitioner

Mr. A. Roy, Ld. GP
Mr. T. Chakraborty
Mr. S. Sanyal
Mr. D. Sahu
... For the State

1. The affidavit-of-service filed in Court today is taken on record.
2. The present writ petition has been filed, *inter alia*, challenging an order passed under Section 73(9) of the WBGST/CGST Act, 2017 (hereinafter referred to as the “said Act”).
3. Mr. Bag, learned advocate appearing in support of the writ petition has submitted that in the instant case, the petitioner was not served with the pre-show cause notice in form DRC 01A. According to him, without service of notice in form DRC 01A, no show-cause notice under Section 73 could have been issued. In support of his aforesaid contention, he has placed reliance on the Judgment delivered by the Hon’ble High Court of Allahabad in the case of ***Skyline***

Automation Industries v. State of U.P. reported in [2023]146 taxmann.com 159(Allahabad). He next points out that in the instant case, not only the order impugned but the entire proceedings was uploaded on the portal. At no stage, the petitioner was served with any other notice or email communication, as contemplated under Section 169 of the said Act. In support of his aforesaid contention that in absence of service of notice at the petitioner's registered e-mail Id, an order passed under Section 73(9) cannot be enforced, reliance has been placed on the judgment delivered in the case of ***Sakti Steel Trading v. Assistant Commissioner (ST)***, reported in [2024]159 taxmann.com 233(Madras). He would next submit that the notice issued under Section 73 of the said Act had also been uploaded under the head "*view additional Notices on orders*". Unfortunately, the aforesaid submission is not supported by any statement made by the petitioner and having regard thereto, I am not inclined to consider the judgment relied on by Mr. Bag in the case of ***St. Xaviers College Calcutta Alumni Association v. Dy. Commissioner of Revenue CGST***, reported in [2025]173 taxmann.com 417 (Calcutta), on the above issue.

4. Mr. Sanyal, learned advocate appears on behalf of the respondents. He would submit that the petitioner has an alternative efficacious remedy in the form of an appeal. The petitioner should not be permitted to invoke the extra ordinary writ jurisdiction of this Court. Admittedly, in this case, the petitioner was served with the notice of proceedings under Section 73 of the said Act on the portal.
5. Mr. Sanyal, would, further, submit that the pre-show cause notice in the form DRC 01A is no longer mandatory having regard to the amended provisions of Rule 142(1A) of the WBGST/CGST Rules, 2017 (hereinafter referred to as the “said Rules”) According to him, no interference is called for.
6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I notice that in the instant case, on the petitioner’s own showing as pleaded in paragraph 9 of the petition, the petitioner claims that the order impugned including the proceedings preceding such order were uploaded on the portal. In this context, I find that the Act recognizes the manner in which the notice and order of the proceedings shall be served on a registered tax payer. To morefully appreciate the

same, the provisions of Section 169 of the said Act are extracted herein below:

“169. Service of notice in certain circumstances.—*(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—*

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

- 7.** Admittedly, I find that having regard to the provisions contained in sub-Section (2) of Section 169 of the said Act that, service of orders summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in a manner provided in Section 169(1) of the said Act. I notice that one of the modes for service of decision, orders, summons, notice or other communications under the said Act and the

Rules thereunder is through uploading the same on the portal in terms of sub-Section (1) Clause (d) of Section 169 of the said Act.

8. In view thereof, since the proceedings were duly uploaded on the portal and since each of the modes of service under Section 169(1) are separate and can be effected independent of the other modes of service provided for therein, the petitioner is deemed to have notice of such proceedings. Although, on the aspect of non service of pre show cause notice, the judgment delivered by the Hon'ble High Court of Allahabad in the case of ***Skyline Automation Industries*** (supra) has been relied on, I find that the same deals with the pre-amended provision of Rule 142(1A) as was subsisting prior to its amendment on 15th October, 2020. The said judgment thus, proceeds on the premise of the unamended provision of Rule 142 (1A) of the said Rules.

9. Having regard thereto, the aforesaid Judgment cannot assist the petitioner. This apart, it is well settled that for a provision to be of a mandatory character, there must be some consequences provided. No consequence has, however, been provided for non issuance of the pre show-cause notice in DRC 01A. Having regard thereto, I am not inclined to accept the contention of Mr. Bag

that non-service of pre show-cause notice is DRC 01A vitiates the order. The petitioner otherwise has an alternative efficacious remedy. However, the petitioner has tried to invoke the extraordinary remedy without a cause. The writ petition is accordingly dismissed with costs of Rs. 10,000/- to be paid by the petitioner to the respondents.

10. Since, it would transpire that the petitioner has invoked the extra ordinary jurisdiction belatedly, and the time to prefer the appeal before the appellate authority has already expired, I am of the view, in the event, the petitioner approaches the appellate authority within a period of 4 weeks from date, challenging the determination on the points not considered herein, the appellate authority having regard to the observations made herein and upon ascertaining the status of payment of costs as directed, shall hear out and dispose of the appeal on merits as expeditiously as possible in accordance with law.

(Raja Basu Chowdhury, J.)