

06. 28.04.2025
Court No.05

(Pritam)

WPA 6070 of 2025

**Kuddus Ali, Proprietor of M/s. Kuddus
Ali Construction.**

-Vs.-

**The Assistnat Commissioner of Central Tax,
Maldah CGST & CX Division, Siliguri
Commissionerate. & Ors.**

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Ms. Tulika Roy,
Mr. Piyush Khaitan

...for the petitioner.

Mr. Kaushik Dey,
Mr. Tapan Bhanja

....for respondents/CGST Authority.

Mr. Srijib Chakraborty,
Mr. Piyas Chowdhury

....for the UoI.

1. The present petition has been filed, *inter alia*, challenging the order dated 30th May, 2024 issued by the respondent no.1 along with the summary of the order thereof issued in DRC-07 dated 9th October, 2024 whereby, the respondents have purported to make recovery of dues payable by the petitioner, by invoking the provisions of Section 75(12) of the WBGST & CGST Act, 2017 (hereinafter referred to as the "said Act").
2. To understand the challenge in the petition, it is necessary to note down certain facts. In the instant case, a notice in Form ASMT 10 dated 20th September, 2024 was issued, identifying certain

discrepancies in the returns filed by the petitioner in respect of the financial year 2019-2020. The same would demonstrate that there is a short payment of duty of Rs. 54,06,403/-. To morefully appreciate the nature of discrepancies, the particulars in the aforesaid ASMT 10 are extracted hereinbelow:

Annexure A-1
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FORM GST ASMT -10
[See rule 99(1)]

Date: 06/07/2023

Reference No: ZW1905230607840

To GSTIN: 19AKAP6025D12S

Name: KUDDUS ALI

Address: KUDDUS ALI CONSTRUCTION,MAHISHBATHANI,MAHISHBATHANI BALUATOLA,BARKOL,OLD MALDA,Makda,19,732128

Tax period - F.Y.: 2019-2020

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, the following discrepancies have been noticed:

On scrutiny it is found that during 2019-20 the assessee have short paid GST to the tune of Rs. 12,75,323/-[IGST] due to mismatch in GSTR-1 and GSTR-2A/3B. He also requires to pay applicable interest on such amount of GST. Moreover, it is found that the assessee have shot paid interest to the tune of Rs 41,31,049/- [CGST+ SGST] due to late filing of GSTR-3B during 2019-20.

ACT	Tax	Interest	Penalty	Fee	Others	Total
IGST	1,275,323.00	0.00	0.00	0.00	0.00	1,275,323.00
CGST	0.00	2,065,540.00	0.00	0.00	0.00	2,065,540.00
SGST/UGST	0.00	2,065,540.00	0.00	0.00	0.00	2,065,540.00
CESS	0.00	0.00	0.00	0.00	0.00	0.00
Total	1,275,323.00	4,131,080.00	0.00	0.00	0.00	5,406,403.00

You are hereby directed to explain the reasons for the aforesaid discrepancies by 07-08-2023.If no explanation is received by the aforesaid date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Name : Tanmoy Chaudhuri
Designation: Superintendent

Pl/ 2-5
Annexure A-1
in paragraph 2-5
of the order dated 06/07/2023
of the Commissioner of Customs
at Kolkata.

3. The petitioner appears to have responded to the aforesaid notice and had afforded an explanation. Insofar as discrepancy of short payment and delayed filing of return in GSTR 3B attracting late fees and interest is concerned, the petitioner admitted that there had been short payment, delay and having regard thereto, the petitioner had sought for payment of interest on the sum due in installments.

4. Records would reveal that immediately after the aforesaid explanation, a demand had been raised, which had been communicated to the petitioner in Form DRC 07 dated 9th October, 2024 though, the detailed order thereto appears to have been passed on 30th May, 2024. The petitioner questions the aforesaid determination.
5. Mr. Kanodia, learned advocate for the petitioner, questions the aforesaid determination by, *inter alia*, contending that in this case, no show-cause notice had been issued as is required under the scheme of the said Act. The respondents have purported to straight away adjudicate upon the petitioner's liability and have proceeded further and did not stop there. The respondents have directly proceeded to recover the aforesaid amount by invoking the provisions of Section 75(12) of the said Act. This according to Mr. Kanodia is not permissible.
6. Mr. Dey, learned advocate representing the respondents would submit that it is within the rights of the respondents to call upon the petitioner to make payment of the admitted amount which is payable as self-assessed tax. By referring to the provisions of Section 75(12) of the said Act, it is submitted that where any amount of self-assessed tax in accordance with a return furnished under Section 39 remains unpaid, either wholly or in part, or the amount of

interest payable on such tax remains unpaid, the same shall be recovered under the provisions of Section 79 of the said Act and no separate adjudication order is necessary. He would submit that having regard thereto, as provided in the scheme of the Act, no show-cause notice was issued. The same cannot tantamount to failure of justice since there is no necessity to give any opportunity of hearing especially when there is an admission made by the registered tax-payer. He has placed before this Court the notice issued in Form ASMT 10 and has drawn attention of this Court to the response given by the petitioner and would submit that the petitioner has, in fact, in the response filed by him had acknowledged that the returns have been filed beyond time, there is short payment and having regard thereto, there was no irregularity on the part of the respondents to determine the liability *suo motu* and to recover the same under Section 75(12) of the said Act.

7. In response, Mr. Kanoria, has placed before this Court the explanation to Section 75(12) of the said Act and would submit that the expression "*self-assessed tax*" would only include the tax payable in respect of details of outward supplies furnished under Section 37, but not included in the return furnished under Section 39 of the said Act. Having regard thereto, he

would submit that once, a *self-assessed tax* is included in the return furnished under Section 39, the same cannot be treated to be a “*self-assessed tax*”, which may be recovered by invoking the provisions of Section 75(12) of the said Act.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. The short point that falls for consideration in the present petition is whether the respondent no.1 could have bypassed the provisions of Section 73/74 of the said Act to determine and recover the interest and late fee from the petitioner by falling back on the provisions of Section 75(12) of the said Act.

9. From the discrepancies disclosed in Form ASMT 10, it would transpire that on the basis of the scrutiny of returns filed in the Form GSTR 1, GSTR 3B and GSTR 2A, there was a short payment of tax of Rs. 54,06,403/-. It may be borne in mind that ordinarily a return under Section 37 in respect of outward supplies is required to be furnished on or before the 10th day of the month succeeding the tax period for which such returns are to be furnished and the same is required to be furnished in Form GSTR 1 electronically in terms of the Rule 59 of the WBGST Rules, 2017 (hereinafter referred to as the “said Rules”). Once, the aforesaid returns are ordinarily filed in respect of outward supply, a statement is

auto-populated in Form GSTR 2B. The scheme of the said Act provides that after the aforesaid statement is displayed within the 13th day of the month succeeding the tax period, the registered taxpayer is able to ascertain the extent of credit available and to compute the liability, if any, and then to furnish a return electronically in terms of Section 39 of the said Act within 20th day of the succeeding month having regard to Rule 61 of the said Rules.

10. Thus, once a return under Section 39 is filed and the details of self-assessed tax in respect of outward supply is included in the returns filed under Section 39 of the said Act, then ordinarily in case the short payment of tax, upon scrutiny of the records the discrepancies are required to be identified at the first instance by issuing Form ASMT 10, in terms of the disclosure required to be made as per Section 61 of the said Act for the registered taxpayer to furnish an explanation thereto. The said Section provides that in case no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him or where the above taxpayer after accepting the discrepancies, fails to take corrective measure in his returns for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Sections 65 or 66 or 67

or proceed to determine tax or other dues under Section 73 or Section 74 of the said Act.

11. Since Mr. Dey had contended that there being admitted dues in respect of self-assessed tax, the respondents were not required to enter into any enquiry under Section 73 or Section 74 of the said Act and had accordingly invoked Section 75(12) of the said Act, it is necessary to scrutinize the same. To understand the scope of the aforesaid section, the said Section 75(12) of the said Act is extracted hereinbelow:

“Section 75(1)

(12) Notwithstanding anything contained in Section 73 or Section 74 [or Section 74-A], where any amount of self-assessed tax in accordance with a return furnished under Section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of Section 79.

[Explanation.—For the purposes of this subsection, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under Section 37, but not included in the return furnished under Section 39.]

.....”

12. It may be noted that having regard to the explanation provided under Section 75(12) of the said Act, the expression “self-assessed tax” shall

include tax payable in respect of the details of outward supplies furnished under Section 37 of the said Act which are not included in the return furnished under Section 39 of the said Act. Admittedly, in this case it would transpire that the *self-assessed tax* of the petitioner under Section 37 of the said Act has been included in the returns under Section 39 of the said Act. It is not the case of the respondents that the *self-assessed tax* furnished under Section 37 of the said Act has not been included in the returns under Section 39 of the said Act. In my view, once, the *self-assessed tax* as per Section 37 is included in the return furnished under Section 39 of the said Act, Section 75(12) of the said Act can no longer be invoked as is clear from the above explanation. Further a bare perusal of the notice issued in ASMT 10 dated 6th July, 2023 would in no uncertain terms disclose that the returns filed by the petitioner in Form GSTR1 had been included in Form GSTR-3B. It would also transpire from the order impugned that the respondents have proceeded to determine late fees and interest by proceeding to demand the same from the date of filing of return under Section 39 of the said Act in Form GSTR-3B. Having regard thereto, I am of the view that the respondents could not have invoked the provisions of Section 75(12) of the said Act, nor could the

respondents claim that the demands made by the respondents are based on admission made by the petitioner. Further, having regard to the provisions of the said Act as provided in Section 61(3) of the said Act, in case the explanation furnished by the petitioner is found unacceptable there is no option but to initiate appropriate action under the provisions of Section 65 or 66 or 67 or 73 or 74 of the said Act and not Section 75(12) of the said Act.

13. In view thereof, the aforesaid determination made by the respondents cannot be sustained. The same is set aside. However, at the same time, having regard to the admission made by the petitioner in response to the ASMT 10, I am of the view the aforesaid order passed by the respondents on 30th May, 2024 can be treated as a show cause and having regard thereto, the petitioner shall be at liberty to respond to the said show cause within a period of three weeks from date.

14. The respondents shall be obliged to decide the same in accordance with law.

15. Since the order dated 30th May, 2024 has been set aside the consequential demand raised by the respondents in Form GST DRC 07 dated 9th October, 2024 for the tax period 2019-20 stands quashed.

16. With the above observations and directions, the writ petition stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)