

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 9655 of 2025

**Tara Lohia Private Limited
-Vs.-
Additional Commissioner, CGST & CX,
Kolkata South Commissionerate & Anr.**

For the petitioners	:	Mr. Vinay Kr. Shraff, Ms. Priya Sarah Paul, Ms. Dev Kr. Agarwal, Ms. S. Poddar, Ms. Ankita Biswas,
For the CGST Authority	:	Mr. Vipul Kundalia, Mr. K. K. Maiti, Mr. D. Chowdhuri,
Heard on	:	09.07.2025.
Judgment on	:	09.07.2025

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed *inter alia* challenging the order dated 29th January, 2025 issued under Section 74 of the WBGST/CST Act, 2017 (hereinafter referred to as the "said Act") in respect of the tax period July 2017 to March 2022. Records would reveal that on the basis of an audit observation under Section 65 of the said Act, a proceeding under Section 74 was initiated by issuing a

notice dated 1st August, 2024 in the Form DRC-01. From the show cause it would transpire that the proposed demand has been made on the following heads:-

- “2.1. Irregular availment of ITC contravening the provisions of Section 16 of CGST Act, 2017 as the supplier did not file GSTR-3B return:*
- 2.2. Irregular availment of ITC (Block Credit) against the invoices related to purchase/repair and maintenance of motor vehicles in violation of Section 17(5) of CGST Act, 2017:-*
- 2.3. Irregular availment of ineligible credit in violation of Section 16(1) & 16(2) of CGST Act, 2017:*
- 2.4. Excess availment of ITC in GSTR-3B in comparison to GSTR-2A violating the provisions of Section 20 of the IGST Act, 2017:*
- 2.5. Non-payment of GST on the supplies received from unregistered supplies under RCM:*
- 2.6. Non-payment of GST on GTA services & Legal services received under RCM:*
- 2.7. Non-payment of GST [GSTR-9 vis-à-vis Profit and Loss Account]*
- 2.8. Irregular availment of ITC due to non-payment of value of supply along with tax to the Sundry Creditors within a period of 180 days violating the provision of Section 16(2) of the CGST Act, 2017:*
- 2.9. Short-payment of RCM as reflected in GSTR-2A:*
- 2.10. Non-payment of tax [GSTR-9 vis-à-vis GSTR-9c]*
- 2.11. General Penalty under Section 125 of the CGST Act, 2017 read with SGST Act, 2017”*

2. Mr. Saraf, learned Advocate representing the petitioner has, however, pointed out that the petitioner confines the challenge only in respect of the paragraphs 2.2, 2.3, 2.4 and 2.8 of the above show cause. Since, according to Mr. Saraf, the show cause has been initiated on the basis of the audit observations, he had drawn attention of the Court to the audit observations especially in relation to the non-payment of tax to sundry creditors and would submit that the respondents had in the most irregular manner purported to treat the outstandings shown against sundry creditors in the balance-sheet/profit and loss account of the petitioner as amounts which have remained outstanding for more than 180 days, in order to attract the second proviso of Section 16(2) of the said Act, though there being no basis for the same.
3. According to Mr. Saraf, the reflection of the figure against the head of the sundry creditor in the balance sheet/profit and loss account of the petitioner cannot tantamount to an outstanding amount of the sundry creditor beyond 180 days. In the instant case, on the basis of the disclosure made by the petitioner, according to him, except for one particular creditor, namely Unique Safety, there are no other sundry creditors in respect whereof, payment had been made beyond 180 days from the date of the invoices being raised. Although, such fact was duly notified to the auditors, the respondents by ignoring the same have caused the show cause to be issued. Despite the fact that the petitioner had clarified its position once again, in the

response to the show cause and though, the proper officer in paragraph 9.9.3 of the adjudication order has taken note of such response, such response appears to have been brushed aside on the ground that the proof of payment by way of bank statement was not disclosed. In this context, Mr. Saraf submits that when an audit enquiry was made, the respondents could have called for all documents including payments voucher and bank statements and could have examined such issue. Having not done so, the petitioner cannot be made responsible for the same.

4. On the issue of irregular availment of input tax credit against the invoices relating to purchasers as detailed in paragraph 2.2 and the irregular availment of ineligible credit in paragraph 2.3 and the excess availment of ITC in GSTR 3B, he would submit that ordinarily, the petitioner has no control in respect of a statement generated in GSTR 2A and 2B. The petitioner had duly clarified the position and had indicated that it intended to claim credit in respect of purchase made by the petitioner which concerns the petitioner and not otherwise. Such aspect has also not been properly dealt with by the proper officer. According to Mr. Saraf, the aforesaid is an error of jurisdiction committed by the proper officer and as such notwithstanding the availability of alternative remedy in the form of an appeal under Section 107 of the said Act, this Hon'ble Court is competent to entertain the writ petition under Article 226 of the Constitution of India. In support of his aforesaid contention, he has

placed reliance on the judgment delivered in the case of ***Raza Textiles Limited v. Income Tax Officer, Rampur***, reported in **(1973) 1 SCC 633**. In the backdrop as aforesaid he would submit that the order passed by the proper officer dated 4th February, 2025 should be set aside and the matter be remanded back for re-adjudication on the issues noted above.

5. Mr. Kundulia, learned Senior Advocate, appears on behalf of the respondents. While reserving his right to challenge the writ petition on the ground of alternative remedy he has addressed this Court on merits to demonstrate that the proper officer did not commit any irregularity in procedure. By drawing attention of this Court to paragraphs 9.9.3 and 9.9.4 of the order impugned he would submit that admittedly, in this case the petitioner did not disclose materials in the form of bank statements to demonstrate that the payments made to the sundry creditors were within the prescribed period of 180 days for the petitioner to avail the credit.
6. According to him, if the petitioner has failed to provide documents, the onus thereof, cannot be thrust on to the respondents. On the issue of irregular availment of ITC, he has drawn attention of this Court to paragraphs 9.3 so as to demonstrate that the petitioner has not disclosed supporting documents for availing the same. According to him, there is no irregularity in the order. The issues raised by the petitioner are within the competence of the proper officer to adjudicate.

7. Following the above, he submits that in the case noted above and having regard to the availability of alternative remedy in the form of appeal, the writ petition is not maintainable and should be dismissed.
8. Heard the learned Advocates appearing for the parties and considered the materials on record. From the facts noted herein, I find that the petitioner is primarily aggrieved with the failure on the part of the respondents including the proper officer to consider the claim made by the petitioner that all payments to the sundry creditors were made within the statutory period of 180 days which entitles the petitioner to avail input tax credit. In this context as noted above, I find that upon the audit observation being published in the form ADT-2 dated 13/16th February, 2024, the petitioner had duly filed a response and subsequently after issuance of show cause notice had disclosed a chart so as to contend that except for one particular creditor, in respect of all other creditors payments had been made within the period of 180 days.
9. I find that the aforesaid aspect has duly been considered by the proper officer in paragraph 9.3.3 of the order impugned. I also find that the proper officer has concluded that the petitioner has failed to substantiate the factum of payment to sundry creditors within the statutory period of 180 days for the petitioner to avail the input tax credit, by disclosure of bank statements. Although Mr. Saraf, learned Advocate has contended that it was the responsibility of the

respondents to enquire about the bank records in course of audit, I am of the view, if during the audit the respondents had failed to notice such documents, it was the obligation and the onus of the petitioner to place such documents before the authorities. The same has not been done. Admittedly, there is nothing on record even today at this stage to substantiate the fact that the payments made by the petitioner to the sundry creditors were, in fact, made within 180 days from the date of the invoices.

10. On the issue of irregular availment of input tax credit, I find such issue has also been considered and the proper officer has returned a finding that in the absence of appropriate supporting documents no relief could be afforded. I may note in this context that ordinarily a challenge to an appealable order is not entertained under Article 226 of the Constitution of India. Though, violation of principles of natural justice, and a challenge on jurisdictional issue can be maintained, such issue must, in my view, relate to an exercise of jurisdiction by an authority which it does not have, and not merely an error committed within its jurisdiction.
11. In the instant case, the exercise of jurisdiction by the authority is not in question. Admittedly, according to the petitioner the order has been partly complied with. What the petitioner seeks to challenge is an error committed by the proper officer while considering the materials on record. I am afraid that this Court cannot enter into

such disputed questions in an application under Article 226 of the Constitution of India.

The judgment relied upon by Mr. Saraf in the case of **Raza Textiles Ltd (supra)** does assist the petitioner. In the said case the Income Tax Officer had by treating the seller firm to be non-resident firm held that the assessee was liable to deduct income tax and pay the Government. On appeal, the appellate authority was of the view that the condition precedent for maintaining the appeal was to comply with the statutory provision i.e. deduction of tax due from non-resident and payment thereof to the Government. As the conditions for deduction and payment of tax was not complied with, the appeal was rejected. It is in connection with a challenge to such an order under Article 226 of the Constitution of India, although, the finding of the ITO was upset by the learned Single Judge, the Hon'ble Appellate Court had set aside the same holding that the same is beyond the jurisdiction of the learned Single Judge. It is in that context the Hon'ble Supreme Court observed that an authority cannot confer onto itself a jurisdiction by deciding a jurisdictional fact wrongly. Such an issue can be considered by the High Court under Article 226 of the Constitution of India. The aforesaid observations have been made in different set of facts. The facts of the case are distinguishable and do not assist the petitioner.

12. It is, however, made clear that the decision on the challenge made in this petition is conclusively adjudicated between the parties,

especially since, the petitioner has taken a chance and approached this Court. No further statutory challenge thereto, is maintainable as the petitioner cannot be permitted to have a second round before the appellate authority, so as to reopen the issues raised herein once again. Save to the above, on the prayer made by learned Advocate for the petitioner, if any other challenge which has not been presented in this petition, is raised in the appeal within a period of four weeks from date, provided the same is maintainable in law, the appellate authority, having regard to the observations made hereinabove, shall hear out the appeal and dispose of the same as expeditiously, as possible subject to compliance of all other formalities by the petitioner.

13. With the above observations and directions, WPA 9655 of 2025 stands disposed of.
14. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Raja Basu Chowdhury, J.)

KOLE
A.R. (Court)