30.07.2025
Item No.
AD 8

Saswata

**WPA 10125 of 2025**

**Sanjay Chamaria**
**Vs**
**The Principal Chief Commissioner, CGST & CX, Kolkata Zone & Ors.**

Mr. Arnab Dasgupta
Mr. B. Sengupta
…For the petitioner
Mr. Manasi Mukherjee
Mr. Tapan Bhanja
…For the respondent nos. 1 to 4
Mr. Kaushik Dey
Ms. Ekta Sinha
…For the respondent nos. 2 to 3

Mr. Uday Shankar Bhattacharya
…For the respondent no.5
Mr. Anjan Chakraborty
…For the Union of India

1. The present writ petition has been filed, *inter alia,* challenging what the petitioner seeks to represent as a procedural irregularity in deciding the show-cause issued under Section 74 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") dated 3rd August 2024. The matter pertains to the petitioner availing bogus and ineligible Input Tax Credit (ITC) for which the above show-cause had been issued.
2. It is the petitioner's contention that the petitioner was not afforded with an opportunity to cross examine the truck drivers who had given their statements in the case. According to the petitioner though the statements of the truck drivers were

made over to the petitioner, such truck drivers were not produced for cross examination.

3. Mr. Dasgupta, learned advocate appearing for the petitioner has, however, confined the challenge in the writ petition on the aforesaid aspect. It is on record that in furtherance to the aforesaid show cause, an adjudication order dated 5th February, 2025 under Section 74(9) of the said Act for the tax period 2017-18, 2018-19 and 2019-20 has been passed. Three separate demand notices in form GST DRC- 07 all dated 5th February, 2025 for the respective tax periods had also been raised.

4. At the very outset, Mr. Dasgupta has taken me not only through the show cause notice but also the response filed by the petitioner annexed with the supplementary affidavit and has contended that the petitioner in no uncertain terms had called upon the respondents to provide the petitioner with an opportunity to cross examine the persons who had given their statements which the petitioner contends to have been given under duress. The fact that the petitioner had not been afforded with an opportunity to cross examine would corroborate from the findings recorded in the order in original dated 5th February, 2025. He would further submit that the aforesaid constitutes violation of principles of natural justice

and as such, the petitioner despite not availing the ordinary remedy in the form of appeal, is entitled to invoke the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. As such, he seeks interference.

5. Ms. Mukherjee, learned advocate appearing for the respondent nos. 1 to 4 has taken me through the detailed show cause notice and would submit that in this case, the petitioner had availed and utilized ITC on the basis of purchases which were allegedly received by the petitioner, though, in reality the entire transaction is fake. She has also taken me through the statements of the petitioner as recorded in the show cause notice.

6. Mr. Bhattacharya, learned advocate appearing for the respondent no. 5 submits that the petitioner was not only engaged in dubious process of evading tax but has also availed and utilised Input Tax Credit (ITC) on the basis of fake transaction and invoices through supplies made from fake entities. In this context, he has relied on paragraph 2.7 of the show cause notice.

7. Both Ms. Mukherjee and Mr. Bhattacharya jointly have submitted that in the facts of the instant case there was no question of the petitioner being afforded with the opportunity to cross examine the transporters who had given the statements for the

simple reason that the petitioner had not come forward to make any disclosure in support of his contention that he had not received supplies or that the supplies effected from the entities were genuine. Not even copies of the e way bills had been disclosed by the petitioner. According to them no interference is called for.

8. Having heard the learned advocates appearing for the respective parties, I may notice that in the instant case, the show cause notice is based on the premise that the petitioner has his registered place of business at 4th Floor, D-424, 71, Biplabi Rash Behari Basu Road, Bagri Market, Kolkata – 700001 and is carrying on trader-retail business of supplying various gifts and novelties items, toys, articles of plastics, household articles. In relation to this alleged business the petitioner had availed bogus and ineligible ITC to the tune of Rs.1,67,79,887.00/- during the period 2017-18 (1st July 2017 onwards) to 2019-20 and accordingly a notice under Section 74 of the said Act was issued. From the show cause notice and as pointed out both by Ms. Mukherjee and Mr. Bhattacharya, it would transpire that a search was conducted at the residence of the petitioner at Block A1, Flat 301, 3rd Floor, Arihant Enclave, 493/B/57A G.T.Road, Shibpur, Howrah – 711102 at

around 9.20 A.M. on 23rd January 2024. At the relevant point of time the premises was locked. Later, the petitioner had come forward and unlocked the flat, wherein few furniture were found. Accordingly, a panchnama was drawn.

9. On the same date, a search was also conducted at the place of business of the petitioner at around 10.35 hours when the said shop was found to be shuttered down and closed. At around 12.40 hours, one person namely, Koushik Dutta introduced himself as a staff of M/s Gift land and opened the shutter for the authorities. The authorities could not identify any documents or records or articles lying at the shop. Later, the petitioner informed that he had recently lost his father. However, he confirmed that he and his company had availed ITC from the list of companies which featured in the alert list which were shown to him, and candidly submitted that he had no documents or evidence towards proof of receipt of goods from the companies mentioned in the alert list. I also find that the petitioner was interrogated and in course of such interrogation in answer to query 4 and 5, he had stated as follows: -

> "**Question no. 4. During the search of your Principal Place of Business, no purchase or sale bill or invoice or any other documents or accounts or sales etc were found in that place. Please comment.**

**Reply:** It could have been best answered by my father. But as stated in my reply to question no. 3 above, in his absence, I am not in a position to comment. It is a fact that no records / documents have been found at my principal place of business, as was found on verification today, and for this I sincerely do not have any suitable answer, as ideally it should have been there as per GST law.

**Question No. 5. Please refer to answer to question no. 2 above. Are you accepting that fact that you have availed and utilized irregular and fake ITC to the tune of Rs.1,67,79,887/- on the strength of invoices issued by fake and nonexistent firms and the liabilities that arises in respect of such irregular availment and utilization?**

**Reply:** Yes, as per GSTR 2A and list shown by you it cannot be denied on my part that my firm has availed and utilized ITC from the mentioned entities. However, I am not in a position to evaluate the pros and cons of the entire matter. I am mentally disturbed for the sudden mishap which happened to my family. Besides, I am in a financially very bad shape as after Covid 19, the business of my firm has gone down and for that huge financial constraint I am not in a regular business activity for the last two years which can be seen from my GSTR1 and GSTR3B return which I have been filing Nil continuously for the last two years almost. So, even if there arises a situation when I may be convinced that any tax liability may arise, I am financially handicapped to take care of any burden at this moment.

10. In response to a query from the Court, Mr. Dasgupta had submitted that the aforesaid statements had not been retracted by the petitioner at any stage. I find that apart from sample copies of invoices and sample copies of

bank statement, no other documents have been produced by the petitioner. From a perusal of the order impugned, I notice that the proper officer while dealing with the issue of cross examination, has observed as follows :-

> - **That the suppliers who were found non existent and the transport vehicle owners may be cross examined in light of various case law:-** I find that the 07 vehicle owners whose statements were taken on record during the issuance of the impugned show –cause notice (evidenced in Table C above) have clearly stated that their vehicle numbers have been misused and they have not transported any goods to the said taxpayer to their principal place of business or godown or any other place. Such a response from all 7 of the vehicle owners points towards a pattern of behaviour aimed towards evasion of taxes through availing of ITC from the purchase of goods only on paper without actual delivery of the same, which is in clear violation of Section 16(2)(b) of the said act. I thus find no need for cross examination of the vehicle owners or any persons connected with the non-existent suppliers, and hold their statement as issued before the issuance of the impugned show –cause notice to be true and in order.
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> - **That there can be no sale if no purchase has taken place –** In this regard, I find that the ITC availed by a taxpayer under the said act originates from the purchase by them. The outward sale of the taxpayer bears no relation with the ITC arising out of purchases and as such any correlation drawn in this regard in factually incorrect.
>
> Furthermore, eligibility for availing and utilizing ITC is clearly defined u/s 16 of the said act, which also says nothing regarding outward sale of a taxpayer.

> Thus, I find the taxpayer's submission in this regard to be factually erroneous and inadmissible.

11. From the above, it is crystal clear that the ITC availed by the petitioner under the said Act originates from purchases made by him. The outward sale made by the petitioner bears no relation with the ITC arising out of purchase and as such, there can be no question of correlating the same.

12. From a perusal of the aforesaid order, it would transpire that the proper officer had determined the case on the basis of the documents disclosed by the petitioner. Although, the petitioner would contend that the petitioner has been prejudiced by reasons of failure on the part of the proper officer to make available the witnesses who had given their statements for cross examination, I, however, find that the petitioner only was interested to cross examine the witnesses in order to ascertain whether the witnesses had given their statements under duress. No documents had been disclosed by the petitioner in support of the aforesaid contention. None of the witnesses had retracted their statements. The petitioner has also not put forward any other statements made by the

aforesaid persons that their statements were given under duress.

13. Ordinarily, cross examination is permitted to test the veracity of statements made by a witness, to find out the accuracy of the testimony so that the testimony can be impeached on the witnesses not being able to hold on to their testimony during cross-examination. It is thus, not the case of petitioner that the witnesses had given false statement, rather they had been compelled to do so. In the facts of the instant case, the petitioner having contended that the evidence tendered by the aforesaid witnesses being given under duress, in my view the onus was on the petitioner to produce such persons as witnesses at the first instance and not seeking for cross examination of such witnesses. On such ground, I am unable to accede to the petitioner's contention.

14. Accordingly the writ petition fails and is accordingly dismissed without any costs.

15. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

**(Raja Basu Chowdhury, J.)**