Form No. J.(2)
Item No. 03

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

HEARD ON: 08.07.2025

DELIVERED ON: 08.07.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

M.A.T. 903 of 2025
With
I.A. No. CAN 1 of 2025

Raiganj Jeevan Rekha Diagnostic Private Limited & Anr.
Vs.
The Union of India & Ors.
With
W.P.A. 507 of 2025

Appearance:-
Mr. Himangshu Kr. Ray
Ms. Shiwani Shaw
Mr. Sushant Bagaria
Mr. Animitra Roy
Mr. Anish Mondal
Mr. Piyash Chowdhury ....for the appellants

Mr. Bhaskar Prasad Banerjee
Mr. Tapan Bhanja ....for the CGST & CX Authority

Ms. Indrani Chakraborty ....for the Union of India

JUDGMENT

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

1. This intra-Court appeal filed by the writ petitioners is directed against an interim order dated 13th June, 2025 in W.P.A. 507 of 2025 by which, while

granting an interim order of stay, the appellants were directed to deposit 10% of the tax in dispute.

2. Since the issue raised in the writ petition lies in a narrow campus, with the consent of the learned advocates appearing on behalf of either side, the appeal as well as the writ petition are taken up for consideration and are disposed of by this common judgment and order.

3. The issue is whether the appellants have reversed the ITC, which has been wrongly availed by them. It appears that though show-cause notice was served upon the appellants by e-mail, they did not respond to the show-cause notice. This resulted in an *ex parte* order being passed by the adjudicating authority viz. the Assistant Commissioner, Central Goods and Service Tax and Central Excise, Dinajpur Division, Raiganj, Uttar Dinajpur dated 14th December, 2023.

4. Aggrieved by the same, the appellants/assessee preferred appeal before the Additional Commissioner of CGST & Central Excise (Appeal), Sillguri Appeal Commissionerate, which was dismissed. Since the tribunal has not been constituted, the appellants have filed the writ petition in which an interim order was granted subject to certain conditions.

5. Before the appellate authority, the appellants in no uncertain terms have stated that they had filed GSTR-3B and produced a tabulated statement of how the reversal of the wrongly availed ITC has been done. The appellate authority has extracted the submissions made by the appellants in verbatim in the order dated 4th October, 2024.

6. The tabulated format shows the details of the ITC availed for the financial year 2017-18 as per annual GSTR-3B return. However, the appellate

authority in paragraph 5.7 of the order dated 4th October, 2024 would state that the appellants failed to submit GSTR-3B for the month of August, 2017 in order to incorporate the facts mentioned therein.

7. Thus, there appears to be a factual dispute, which needs to be sorted out and that can be done if the assessee is given one more opportunity to reconcile the defect, which has been pointed out.

8. If the assessee have already reversed the ITC then the matter becomes revenue neutral and the question of making any pre-deposit would not arise. That apart, we note that the adjudicating authority did not levy interest on the appellants, which would go to show that the ITC has been reversed. In any event, these are all factual matters, which needs to be adjudicated before the authority.

9. Accordingly, the writ petition as well as the intra-Court appeal are allowed. The order passed by the appellate authority dated 4th October, 2024 is set aside and the matter stands remanded to the original authority viz., Assistant Commissioner, Central Goods and Service Tax and Central Excise, Dinajpur Division, Raiganj, Uttar Dinajpur.

10. The appellants are directed to treat the order in original dated 14th December, 2023 as a show-cause notice and submit their detailed reply along with all documents to the adjudicating authority within a period of 15 days from the date of receipt of server copy of this judgment and order.

11. On receipt of the same, the adjudicating authority shall afford an opportunity of personal hearing to the authorised representative of the appellants, consider all the documents and the submissions that may be

made by the appellants and pass a fresh order on merits and in accordance with law.

12. No costs.

13. 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)
CHIEF JUSTICE

I agree.

(BIVAS PATTANAYAK, J.)

Pallab/KS AR(Ct.)