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

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

HEARD ON: 15.07.2025
DELIVERED ON: 15.07.2025

CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 917 of 2025
With
I.A. No. CAN 1 of 2025

Global Enterprise
Vs.
Additional Commissioner of Central Goods Services Tax & Central Excise, Kolkata South Commissionerate, Kolkata & Ors.

Appearance:-
Mr. Debasish Ghosh
Mr. Lalit Baid
Ms. Sanjana Shaw ....**For the Appellant**

Mr. Uday Sankar Bhattacharya
Ms. Ekta Sinha
Ms. Banani Bhattacharya ....**For the Respondent Nos.1 & 2**

Md. T. M. Siddiqui, Ld. A.G.P.
Mr. N. Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal ....**For the State**

<u>JUDGMENT</u>

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

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 19th May, 2025 in W.P.A. 21567 of 2024. The said writ petition was filed by the appellant challenging the order in original dated 10th April, 2024 passed by the Additional Commissioner of Central Tax, CGST & CX Commissionerate, Kolkata South. By the said order, the adjudicating authority disallowed the Input Tax Credit availed by the petitioner as being irregular for the period 2018-19 to 2021-22 under Section 73(9) of the CGST Act, 2017 read with corresponding provisions of the W.B.G.S.T. Act, 2017 and Section 20 of the I.G.S.T. Act, 2017.

2. The adjudicating authority also ordered for recovery of the excess availment of Input Tax Credit, recovery of short payment of tax, ordered to recover appropriate interest and also imposed penalty.

3. The appellant filed the writ petition contending that adequate opportunity has not been given to the appellant/petitioner and prayed that one more opportunity can be given to the appellant to go before the adjudicating authority and place its submission so that a fresh order can be passed.

4. The learned Single Bench found the submission to be not acceptable as the adjudicating authority had granted sufficient opportunity to the appellant but despite the same, the appellant did not avail such opportunity and accordingly, relegated the appellant to avail the statutory appellate remedy.

5. Before us Mr. Ghosh, learned counsel appearing for the appellant made the same submission as was made before the learned Writ Court and contended that the pre-deposit, which is required to prefer a statutory appeal is a substantial amount and the company cannot afford to pay such substantial sum as pre-deposit and prayed that in the peculiar facts and circumstances, the adjudication order may be set aside and remanded the matter to the adjudicating authority.

6. We have heard Mr. Uday Sankar Bhattacharya, learned senior standing counsel assisted by Ms. Ekta Sinha, learned counsel appearing for the respondent/ department.

7. As could be seen from the order in original, the adjudicating authority issued notices to the appellant not once but three times to appear before him i.e. 17th January, 2024, 31st January, 2024 and 15th February, 2024 to attend the personal hearing, but, none appeared. Thus, it is not a case of violation of the principles of natural justice but a case, where the appellant failed to utilise the opportunity granted to it.

8. Therefore, on this ground, the appellant is not justified to bypass the statutory appellate remedy. Apart from that, the appellant has been in the business for more than 19 years and it is not a dealer, who was registered with the Department very recently and is well-aware with the business practices pay the statutory requirements to be complied with under the various taxation laws.

9. It is submitted by Mr. Bhattacharya, learned senior standing counsel that during the course of investigation, summons was issued to one of the Directors, who responded to the summons and statement has been recorded from the Director, who appears to have admitted the violations. If the Director has responded to the summons and appeared before the authority and has given a statement, then it defies logic that the appellant genuinely is to avail the opportunity of personal hearing provided that too on three occasions.

10. Therefore, we find that the learned Single Bench has rightly relegated the appellant to file a statutory appeal before the appellate authority and we find no ground to interfere with the order impugned.

11. Accordingly, the appeal fails and is dismissed alongwith the connected application (I.A. No. CAN 1 of 2025).

12. Liberty is given to the appellant to file an appeal before the Commissioner of Central Tax (Appeal – I), Kolkata and if such appeal is filed within 60 days from the date of receipt of server copy of this judgment and order complying with the pre-deposit condition, the appellate authority shall not reject the appeal on the ground of limitation, but shall decide the appeal on merits and in accordance with law after due opportunity afforded to the appellant.

13. The appellant is at liberty to produce all documents in support of its claim before the appellate authority.

14. No costs.

15. 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.

(CHAITALI CHATTERJEE (DAS), J.)

Pallab/KS AR(Ct.)