

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

HEARD ON: 12.09.2025

DELIVERED ON:12.09.2025

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

**M.A.T. 1014 of 2025
With
I.A. No. CAN 1 of 2025**

**Murshidabad Flour Mill Private Limited & Anr.
Versus
Joint Commissioner, CGST, Bolpur Commissionerate & Ors.**

Appearance:-

**Mr. Vinay Kr. Shraff
Mr. Dev Kr. Agarwal**

....For the Appellants

**Mr. Koushik De
Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja**

.....For the C.G.S.T. Authority

**Mr. Kishore Dutta, Ld. A.G.
Mrs. Sumita Shaw
Ms. Pratiti Das
Mr. Soumen Chatterjee**

.....For the State

Ms. Sanjukta Gupta

.....For the Union of India

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

1. This intra-Court appeal has been filed by the writ petitioners challenging the order passed by the learned Single Bench in W.P.A. 8713 of 2025 dated 25th June, 2025 by which the learned Single Bench declined to grant any interim order/interim protection but directed the respondents/Department to file their affidavit-in-opposition within a time frame and also granted liberty to the appellants/writ petitioners to file a reply.
2. The appellants would contend that during the course of investigation, the appellants were directed to appear before the investigating authorities viz.

DGGI at New Delhi and they co-operated in the enquiry and a sum of Rs.5,50,62,464.00 was compelled to be paid by the appellants, which was remitted and in proof of such remittance, the details of payment made through DRC-03 on 03.12.2020 has been placed before this Court in Annexure – P8.

3. We have heard this matter on earlier occasions and for the sake of convenience, we have re-capitalize the issue, which would fall for consideration in the writ petition. For easy reference, we quote the relevant portion of our order dated 5th August, 2025, which reads as follows:-

“3. Firstly, whether the provisions of Section 74 of the W.B.G.S.T./C.G.S.T. Act, 2017 could have been invoked and whether a case has been made out for suppression of facts to evade payment of tax.

4. On going through the show-cause notice and the order in original, prima facie, we find that this is not made out.

5. The second issue, which appears to have not been elaborately dealt with by the adjudicating authority is the effect of the Notification issued by the Food & Supplies Department, Government of West Bengal dated 6th September, 2017 called as “West Bengal Public Distribution System (Empanelment of Flour Mill and Milling of Fortified Atta/ Wholemeal Atta) Guidelines, 2017”.

6. On going through the said Guidelines, we find that several conditions have been imposed upon the flour mills, more particularly, that upon empanelment, they are prohibited from indulging in private milling for commercial purpose except with the prior written consent of the State Government.

7. What would be the effect of such Notification? Can the said Notification be overridden by the Central Tax Authorities or the transaction be doubted when the State Government is satisfied that the supplier i.e. the appellants are entitled to the benefit of the Notification?

8. Apart from that what is the entitlement of the empanelled flour mill such as the petitioners have also been stipulated by the Notification issued by the Food & Supplies Department, Government of West Bengal from time to time and the latest Notification appears to have been issued on 7th September, 2018 regarding revision of price structure for distribution of fortified ‘atta’ for A.A.Y. beneficiaries.

9. There is no dispute as regards the price structure, which has been admitted by the adjudicating authority in paragraph 18.7 of the order of adjudication.

10. In such circumstances, the question would be whether upon certain investigation and enquiry conducted mostly, without notice to the appellants/writ petitioners, can the

transaction value be doubted by the Central Tax authorities in the absence of any specific allegation of any fraud committed by the appellants/writ petitioners.

11. It is submitted by the learned counsel appearing for the appellants/writ petitioners that out of compulsion, the appellants/writ petitioners were compelled to pay more than Rs.5 crores as against the impugned demand of more than Rs.8.73 crores.

12. The appellants/petitioners have also sought for a declaratory relief in the writ petition and considering these facts, the learned Single Bench rightly directed the respondents to file their affidavit in opposition.

13. In addition to the grounds, which have been canvassed in the writ petition, two of the issues, which have been pointed out in the preceding paragraphs would also arise for consideration apart from other grounds that may be placed before this Court.

14. Therefore, we are of the view that no further recovery should be made from the writ petitioners/appellants and the recovery proceedings for the balance amount shall remain stayed.

15. A suggestion is made to the appellants/writ petitioners as well as to the Department by permitting the appellants/writ petitioners to file a statutory appeal before the appellate authority subject to the condition that 10% of the disputed tax amount be retained for the pre-deposit to be made at the time of filing of the appeal, but the remaining amount, which has been recovered from the appellants/writ petitioners should be refunded. On this suggestion, the Court will hear the submissions of the learned advocate appearing for the appellants/writ petitioners as well as the learned Senior Standing Counsel for the respondent/Department.

16. The learned advocate appearing for the appellants submitted that in identical circumstances, the adjudicating authority himself has dropped the proceedings initiated in the showcause notices issued to other flour mills. Apart from that there are decisions of the advance ruling authorities on the very issue in favour of the assessee.”

4. Learned advocate appearing for the C.G.S.T. authorities would dispute the contention raised by the learned advocate appearing for the appellants that the appellants were compelled to pay a sum of more than Rs.5.50 crores but it is a payment made by them. This issue needs to be adjudicated for which affidavit has to be filed.
5. The total demand of C.G.S.T. and S.G.S.T. was Rs.8,73,86,825/- and a sum of Rs.5,50,62,464/- has been appropriated as against the said demand and apart

from that in the order of adjudication, penalty has been imposed under Section 74(9) read with Section 74(1) of the Act.

6. In the preceding paragraph, we have noted the broad issues, which fall for consideration in the writ petition, which needs to be adjudicated after affidavits are exchanged in the writ petition.
7. We make it clear that to adjudicate the aforementioned issues, disputed questions of fact need not be gone into. That apart, when this appeal was heard on 26th August, 2025, learned advocate appearing for the appellants, on instructions, submitted that they are giving up one of the prayers, which was for a declaratory relief and recording the said submission, we passed the order dated 26th August, 2025 and the relevant paragraphs read as follows:-

“2. Mr. Sharaff, learned advocate appearing for the appellant on instruction submitted that in one of the prayers made in the writ petition challenging entry Sr. No.3 of the notification no.12/2017-CT(R) dated 28th June, 2006 as ultra vires to Section 8 of the WBGST/CGST Act 2017 and Sr. No.3 of the Schedule II of the said Act are given up and challenge is confined only to the order passed under Section 74 of the Act. The said submission made by the learned advocate appearing for the appellant is placed on record and such portion of the relief sought for in the writ petition stands struck off.”

8. In the light of the fact that the appellants/writ petitioners had paid Rs.5,50,62,464/-, which according to the appellants, were compelled to be paid, which stand is being vehemently disputed by the C.G.S.T. authorities, till the writ petition is heard and decided, the said amount, which has been paid by the petitioners shall be treated as a deposit and shall abide by the final orders that may be passed in the writ petition.
9. In the light of the fact that more than 50% of the demand has already been recovered from the petitioners, the interest of the Revenue stands sufficiently safeguarded. Even assuming an appeal had to be preferred against the impugned adjudication order, the appellants would be required to deposit only

10% of the disputed tax. Therefore, this is also one more reason to treat the payment of more than Rs.5.50 crores as a deposit till the writ petition is heard and disposed of.

10. Till the writ petition is heard and disposed of, no further amount shall be recovered from the appellants and the balance demand, as mentioned in the order in original dated 23rd January, 2025, shall remain stayed.
11. With these above observations/directions, appeal alongwith the connected application (I.A. No. CAN 1 of 2025) stand disposed of.
12. The time for filing affidavit-in-opposition and reply stands extended by four weeks from date.
13. Let the writ petition be listed before the appropriate Bench in the daily list on 28th November, 2025.
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.)