

N.22Sl

151/CL
03.12.25
Sl-13
Ct.551
(S.R.)

WPA 20458 of 2025

Nishant Ispat Private Limited & Anr.
v.
State of West Bengal & Ors.

Mr. Vikas Baisya (VC) ... for the petitioners.

Mr. N. Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ... for the State.

1. The petitioners are aggrieved by an order dated July 28, 2025 passed by the appellate authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 (hereinafter referred to as the 'said Act of 2017') whereby the petitioners' appeal against an order dated February 5, 2025 passed under Section 74 of the said Act has been dismissed on the ground of non compliance with the mandatory condition of statutory pre-deposit.
2. The petitioners' grievance is primarily two fold as already recorded in the order dated November 10, 2025. The first is that the order dated February 5, 2025 could not have been passed since the respondent GST authorities had already dropped an earlier order in respect of the proceedings based on the self-same show-cause notice. The second is that since even prior to the

passing of the adjudication order dated February 5, 2025, which was carried in appeal by the petitioners before the appellate authority, the WBGST authorities had proceeded to realize the tax that had been determined as payable by the order dated February 5, 2025, the petitioners' appeal before the appellate authority ought to have been entertained without requiring the petitioners to put in any further sum in compliance with the statutory mandate under Section 107(6) of the said Act of 2017.

3. Mr. Baisya, learned advocate appearing for the petitioners invites the attention of this Court to a copy of the electronic credit ledger of the petitioners (Annexure P-7, at page 67 of the writ petition) and submits that an amount of Rs.10,76,006/- had been recovered from the petitioners on March 14, 2023 on the strength of the adjudication order dated May 27, 2022, which was dropped by the order dated June 22, 2022.
4. Mr. Chakraborty, learned advocate appearing for the respondent State GST authorities hands up to Court a copy of the instructions dated December 1, 2025 forwarded to him by the Assistant Commissioner of State Tax (the respondent no.6 herein) and submits that due to

a flaw in DRC-08 the demand remained unpaid and recovery proceedings were initiated by the recovery officer whereupon entire tax amount was recovered from the electronic credit ledger of the tax payer. A copy of the instructions handed up to Court is taken on record.

5. It is, therefore, not disputed that a sum in excess of 10% of the tax in dispute stands recovered from the petitioners.
6. In the case at hand a sum in excess of 10% of the tax in dispute was recovered by the Respondent GST Authorities on March 14, 2023 on the strength of an order which was later on dropped by the authorities concerned. A fresh order under Section 74 was passed thereafter on February 5, 2025 which is stated by the petitioners to be based on the self-same show-cause notice. This order was carried in appeal by the petitioners on April 24, 2025.
7. Thus on the date when the appeal assailing the said order dated February 5, 2025 was lodged by the petitioners, the requirement of putting in the statutory pre-deposit already stood satisfied inasmuch as by that time a sum in excess of 10% of tax in dispute had already been recovered.
8. In such view of the matter, the order dated April

24, 2025 is set aside. The matter is remanded to the file of the appellate authority for considering and deciding the petitioners' appeal on merits, without insisting on any further pre-deposit.

9. Since in terms of Section 107(7) of the said Act of 2017 recovery of balance sum, (upon deposit of 10% in terms of Section 107(6) of the said Act of 2017 is deemed to have been stayed), the sum recovered by the respondent State GST authorities from the petitioners in excess of 10% of the tax in dispute shall be refunded to the petitioners upon due verification of the records within four weeks from date. It is clarified that this Court has not gone into the merits of the petitioners' appeal and all points are left open to be decided by the appellate authority in accordance with law.
10. WPA 20458 of 2025 stands disposed of with the above observations.
11. There shall, however, be no order as to costs.
12. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)