

**MAT 1541 of 2025
With
CAN 1 of 2025**

M/s. Bengal Engineering

**Vs.
State of West Bengal & Ors.**

Mr. Promit Majumdar

.....for the Appellant

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

...for the State

1. This appeal, M.A.T. No. 1541 of 2025, has been preferred by the Appellant, M/s Bengal Engineering, assailing the Order dated September 03, 2025, passed by the Learned Single Judge in W.P.A. No. 5309 of 2025. The challenge is essentially directed at the procedural legality and jurisdictional competence of the revenue authorities in confirming a substantial tax demand under the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'), despite glaring and fundamental instances of statutory non-compliance which, in our considered opinion, vitiate the entire assessment proceeding *ab initio*. The matter warrants a comprehensive examination of the adherence to the principles of natural justice and the strict jurisdictional limits imposed by the GST statute.

2. The Appellant is a contractor/developer/concessionaire involved in major public works,

specifically the construction and maintenance of roads and bridges under the Build-Operate-Transfer (BOT) model. The assessment pertains to the tax period July 2017 to March 2018. The substantive dispute hinges upon the taxability of annuity payments received by the Appellant during the operation and maintenance (O&M) phase. The Appellant claims exemption from Goods and Services Tax on these payments, citing Notification No. 32/2017-C.T. (Rate), reflecting a *bona fide* legal belief as to non-liability.

3. The Adjudicating Authority proceeded under Section 74 of the Act, which necessitates an allegation of wilful suppression of turnover (amounting to Rs. 6,96,79,809), and confirmed a total demand, including tax, interest, and penalty, of Rs. 1,36,52,489.08 vide FORM GST DRC-07 dated December 10, 2020. This order was subsequently confirmed by the Appellate Authority *ex parte* on January 02, 2025. The Appellant subsequently approached the Writ Court challenging these assessment orders on fundamental procedural and jurisdictional grounds, which led to the impugned order of the Learned Single Judge.

4. The central and determinative questions that fall for our consideration are:

a. Whether the Adjudication Order, confirming a tax liability of Rs. 83,61,577.08 which is in excess of the amount of Rs. 75,65,693.00 specified in the Show

Cause Notice, constitutes a violation of the mandatory jurisdictional ceiling prescribed under Section 75(7) of the West Bengal Goods and Services Tax Act, 2017, thereby rendering the final demand *ultra vires* the notice and unsustainable in law.

- b.** Whether the failure of the Adjudicating Authority to grant the Appellant an effective opportunity of personal hearing, despite an explicit request in the reply, constitutes a gross violation of the principles of natural justice and the mandatory provision of Section 75(4) of the Act, warranting the setting aside of the *ex-parte* final order.

5. Learned Counsel for the Appellant submitted that the assessment order is afflicted by dual, incurable statutory breaches. Firstly, he pointed out the patent jurisdictional flaw: the Adjudicating Authority confirmed a tax liability of Rs. 83,61,577.08, which undeniably exceeded the amount of Rs. 75,65,693.00 specified in the SCN, in direct contravention of the clear prohibition contained in Section 75(7) of the Act. Secondly, he stressed the breach of natural justice, highlighting that the Appellant had explicitly requested a personal hearing in the Reply (FORM GST DRC-06 dated 02.12.2020), but the Adjudicating Authority proceeded to pass the final order *ex-parte*, violating the mandatory requirement of Section 75(4). Furthermore, he argued that the authority displayed a fundamental non-application of mind by

initiating parallel and contradictory proceedings under Section 73 and Section 74 for the same demand, besides failing to issue the mandatory pre-SCN intimation under Rule 142(1A). He prayed for the quashing of the assessment orders and a remand for *de novo* consideration.

6. *Per contra*, Learned Counsel for the Respondents sought to defend the impugned orders, arguing that the enhancement in the confirmed demand was merely a correction of a calculative error related to the bifurcation of the Central and State components of the tax, which ought not to vitiate the entire proceeding. Regarding the denial of the personal hearing, it was submitted that the Appellant's reply was considered and the documents on record were sufficient to arrive at the conclusion, suggesting that the non-grant of a hearing constituted a mere irregularity and not a fatal infirmity, and that the Writ Court should not interfere in the finality of the assessment merely on procedural grounds.

7. Our examination must focus acutely on the mandatory nature of the provisions cited and the consequences of their non-adherence. The twin pillars of administrative fairness are jurisdiction and natural justice, and both appear to have been severely compromised in the instant case.

8. The first substantive question hinges on the direct contravention of Section 75(7), which operates as a

jurisdictional ceiling. The provision unequivocally states that the amount confirmed in the final order shall not be in excess of the amount specified in the notice. The record establishes a clear and material difference: the tax confirmed (Rs.83,61,577.08) exceeded the tax charged in the SCN (Rs. 75,65,693.00). This increase, irrespective of the authority's *post-facto* justification of a calculation error, is a direct breach of the explicit language of the statute.

II. DECISION ON SQL II: Violation of Section 75(4) (Breach of Natural Justice)

9. The principle is clear: the Adjudicating Authority cannot travel beyond the four corners of the Show Cause Notice. The Hon'ble Supreme Court has consistently held that statutory provisions prescribing limits to an authority's power are mandatory and non-compliance with them renders the action *ultra vires*. The final demand, being in excess of the SCN, is legally dismantled. This vitiates the entire assessment order, as the increased demand lacks the necessary statutory foundation.

10. The second question addresses the breach of the principles of *audi alteram partem*. Section 75(4) of the Act uses the imperative expression "shall be granted" where a request for a personal hearing is made. This converts the power to grant a hearing into a binding statutory duty upon the Adjudicating Authority once the Assessee

makes an explicit request. The failure to respect this statutory command, particularly in a proceeding under Section 74 which involves an allegation of wilful suppression, is not a mere irregularity.

11. The Hon'ble Supreme Court in **Kaveri Telecom Products Ltd. vs. Commissioner of Customs (2018)** and in similar cases concerning taxing statutes, has emphasized that the denial of a mandatory personal hearing, where specifically requested, constitutes a fundamental and fatal infirmity that goes to the root of the administrative action. A procedural breach of this nature, affecting the very fairness of the process, cannot be cured by a subsequent retrospective consideration of the merits of the case. The assessment order, having been passed *ex-parte* despite the statutory mandate, is rendered unsustainable and liable to be set aside on this ground alone.

12. The cumulative effect of the jurisdictional flaw under Section 75(7) and the procedural breach under Section 75(4), compounded by the non-application of mind evident in the parallel proceedings under Section 73 and Section 74, leads us to the inescapable conclusion that the assessment was fundamentally flawed.

13. Therefore, we are at definite conclusion that the Adjudicating Authority under the Goods and Services Tax Act is strictly bound by the jurisdictional ceiling imposed by Section 75(7), and any demand confirmed in the final

order that exceeds the tax amount specified in the Show Cause Notice is *ultra vires* and vitiates the order *in toto*, and the provision of Section 75(4), which mandates the grant of a personal hearing upon request, is absolute, and its denial constitutes a fatal breach of the principles of natural justice, necessitating the quashing of the *ex-parte* order, regardless of the merits of the demand.

14. We find that the assessment orders suffer from fundamental jurisdictional and procedural breaches which render them illegal and unsustainable in the eyes of the law.

15. The appeal is, therefore, allowed.

16. Consequentially it is ordered that:

- i.** The Adjudication Order in FORM GST DRC-07 dated December 10, 2020, and the subsequent Appellate Order in FORM GST APL-04 dated January 02, 2025, are hereby set aside and quashed in their entirety.
- ii.** The matter is remanded to the file of the Adjudicating Authority (Deputy Commissioner of State Tax, Suri Charge) for a *de novo* proceeding commencing from the stage of the Appellant's reply to the Show Cause Notice.
- iii.** The Adjudicating Authority is expressly directed to afford the Appellant a fresh and effective opportunity of personal hearing as strictly mandated by Section

75(4) of the Act, within six weeks from the date of communication of this judgment.

- iv.** The Adjudicating Authority shall, thereafter, pass a comprehensive speaking order on merits, strictly in accordance with law, ensuring that the findings specifically address: (i) the Appellant's substantive claim for exemption on annuity payments, and (ii) strict compliance with Section 75(7), guaranteeing that the final recoverable tax amount does not, under any circumstance, exceed the amount specified in the original SCN.
- v.** The interim order passed by the Learned Single Judge on 03.09.2025 stands merged with this final judgment.
- vi.** Any pre-deposit made by the Appellant shall be subject to the outcome of the fresh adjudication order, with necessary adjustments or refund being processed expeditiously.

17. The appeal is disposed of on the above terms. All pending applications are accordingly disposed of. There shall be no order as to costs.

18. All parties shall act on the server copy of this order, duly downloaded from official website of this Hon'ble Court.

(Uday Kumar, J.)

(Rajarshi Bharadwaj, J.)