06 08.12.2025

Ct. No. 551

Ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23378 of 2025

Mohd. Abdul Bari
Vs.
Assistant Commissioner of Revenue, Commercial Taxes (SGST) Maldah Charge and others.

Mr. Sandip Choraria,
Mr. Rishav Manna,
Mr. Akash Chakraborty.
... for the petitioner.

Mr. Swapan Kumar Dutta,
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal,
Mr. Debraj Sahu.
... for the State.

1. This writ petition takes exception to an order dated July 16, 2025 passed by the appellate authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 (in short 'said Act of 2017') whereby the petitioner's appeal against an order dated January 20, 2025 passed under Section 73 of the said Act of 2017 has been disposed of by modifying the order passed by the adjudicating authority.
2. The case of the petitioner is that the petitioner paid the applicable taxes in respect of the outward supplies made by him to his purchasers, and filed the monthly return in Form GSTR-1 for the month of April (Financial Year 2020-2021) indicating therein the total taxable value as well as the taxes paid by him. However, due to technical glitches,

taxes paid by the petitioner were not reflected in form GSTR-3B.

3. The petitioner realized such mistake and rectified the same while filing his annual return in form GSTR-9.

4. Since there was a mismatch in GSTR-1, GSTR-3B and GSTR-9, proceedings under Section 73 of the said Act of 2017 were initiated and the petitioner was called upon to show-cause as to why should the petitioner not be held liable to pay the taxes and interest as indicated in the said notice.

5. The petitioner could not reply to the said notice to show-cause. Therefore, on January 20, 2025, a demand order under Section 73(9) of the said Act of 2017 was passed ex-parte. Assailing the said order, the petitioner approached the appellate authority by filing an appeal under Section 107 of the said Act of 2017. One of the grounds raised by the petitioner before the appellate authority was that since the petitioner had rectified the mistake that had been committed in filing the return in form GSTR-3B, at the time when the petitioner had filed his annual return in form GSTR-9, the petitioner was not liable to pay any further tax inasmuch as all taxes that could be levied on the petitioner for outward supplies had already been paid. It was the petitioner's contention that the order passed by the

adjudicating authority had not appreciated the fact that all the taxes paid by the petitioner were duly reflected in form GSTR-9 filed by the petitioner.

6. The appellate authority upon considering the petitioner's submissions, comparing Form GSTR-1 and GSTR-3B filed by the petitioner and upon consulting the petitioner's Books of Accounts reached the conclusion that a sum of Rs. 3,91,785.00 each was payable on account of CGST as well as SGST together with interest.

7. Aggrieved by the aforesaid order, the petitioner has approached this Court by filing the present writ petition.

8. Mr. Choraria, learned Advocate appearing on behalf of the petitioner, invites attention of this Court to the annual return filed by the petitioner in form GSTR-9 (at page 76 of the writ petition) wherein the taxable value of the supplies made by the petitioner to unregistered persons has been mentioned as Rs.8,26,83,673.88, which breaks up into Rs. 20,69,799.25 each on account of CGST and SGST.

9. It is submitted by Mr. Chaoraria that upon comparing the taxable values of the outward supplies of the petitioner, as indicated in Form GSTR-9 and those found by the appellate authority upon examining the petitioner's books of accounts, it would reveal that the difference between the

amounts paid by the petitioner towards tax or as shown in form GSTR-9 and as culled out from the books of accounts is in the region of Rs. 100/-.

10. Mr. Chakrabory, learned Advocate appearing on behalf of the respondents, submits that the writ petitioner filed by the petitioner is absolutely silent on the aspect of non-application of mind by the appellate authority as regards form GSTR-9 filed by the petitioner. It is further submitted that no such ground was taken by the petitioner before the appellate authority.

11. Mr. Choraria is however, quick to revert by inviting attention of this Court to Ground 8 of the writ petition and Grounds 15 and 17 in the appeal filed by the petitioner before the appellate authority in order to demonstrate that such grounds were/are taken.

12. Heard the learned Advocates appearing on behalf of the respective parties and considered the material on record.

13. Once it is contended by the petitioner that the mistake, which was committed by the petitioner in filing monthly return for the month of April (Financial Year 2020-2021) in form GSTR-3B due to technical glitch, was ultimately rectified by the petitioner while filing annual return in Form GSTR-9, the appellate authority was required to consider

the same before reaching the conclusion that it has. The appellate authority has not applied its mind to the return filed in GSTR-9 which will be clear from the following observations of the appellate authority:

"In order to verify the above claim of the Ld. AR the details of GSTR-1 & GSTR-3B filed by the for the period January to March, 2021 were examined in the BO Portal, which are found as follows:

GSTR-1:

Period	Filed on	ARN	Taxable Value	IGST	CGST	SGST
January, 2021	14.02.2021	AA190121271324K	5841377.63	0	146119.08	146119.08
February. 2021	12.03.2021	AA19022125 73395	4437644.49	0	110941.12	110941.12
March, 2021	15.04.2021	AA190321475621A	15322935.70	0	383257.64	383257.64
Total			25601957.82	0	640317.84	640317.84

GSTR-3B

Period	Filed on	ARN	Taxable Value	UGST	CGST	SGST
January, 2021	20.02.2021	AA190121423642M	5841377.63	0	146119.08	146119.08
February, 2021	16.03.2021	AA90221140230Z	4437644.49	0	110941.12	110941.12
March, 2021	15.04.2021	AA190321475621A	504391.58	0	126197.44	126197.44
Total			15322935.7	0	383257.64	383257.64

Now, as seen from the above data the taxable values and outward tax as declared in GSTR-1 of AJanuary & February, 2021 matched with the values corresponding to GSTR-3B of January & February, 2021 and that the total taxable value & outwawrd tax as declared in GSTR-3B for January, February,& March, 2021, taken together, matched with the corresponding values declared in GSTR-1 filed for March, 2021. Being so, it is evident from the BO Portal *that Taxable Value of Rs. 10279022.12 involving outward tax of Rs. 257060.20 as CGST & SGST each had been declared in excess in GSTR-1 filed for the period March, 2021. However, examination of books of accounts & relevant documents of the Appellate is warranted in order to verify the actual turnover and outward taxes payable."*

14. The aforesaid extract from the appellate order would reveal that the appellate authority was more focused on GSTR-1, GSTR-3B and the Books of Accounts did not at all take into consideration the effect of Form GSTR-9. The Court has noticed that the Appellate Authority has briefly referred to Form GSTR-9 at page 4 of the appellate order but that does not reflect proper application of mind.

15. If the petitioner is right in his contention that the tax, which was supposed to be paid by him has indeed been paid by him and the same would be revealed from Form GSTR-9 and further that the amount of tax which remains short paid is only in the region of Rs. 100/- then in such a situation, the order impugned imposing tax to the tune of Rs.3,91,785.35 each as SGST and CGST cannot be said to be a product of proper application of mind. On such ground alone, that part of the appellate order whereby the petitioner has been found liable for CGST to the tune of Rs. 3,91,785.35 and SGST to the tune of Rs. 3,91,785.35 is set aside and the matter is remanded to the file of the appellate authority for fresh consideration upon taking into

proper consideration the return filed by the petitioner in form GSTR-9 in accordance with law.

16. It is clarified that this Court has not gone into the merits of the petitioner's claim and the appellate authority shall be absolutely free to verify and examine the petitioner's claim as regards the content of Form GSTR-9 and the effect thereof in accordance with law and reach its own independent conclusion based on the material on record. It is further clarified that the other parts of the appellate order, barring the portion which has been set aside herein above, are not interfered with.

17. WPA 23378 of 2025 stands disposed of with the above observations.

18. There shall, however, be no order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Om Narayan Rai, J.)