08 **15.12.2025**

Ct. No.

Ab

WPA 24840 of 2025

Madhab Patra
Vs.
The Assistant Commissioner, CGST & CX, Singur Division, Howrah Commissionerate and others.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Piyush Khaitan.
... for the petitioner.

Mr. Bhaskar Prosad Banerjee,
Mr. Kaustav Kanti Maity.
... for the respondents-CGST & CX.

Ms. Sipra Chanda.
... for the respondent no. 5.

1. This writ petition lays challenge to an order dated June 23, 2025 (uploaded on June 24, 2025) passed by the appellate authority under Section 107 of the CGST Act, 2017/WBGST Act, 2017 (in short "said Act of 2017") whereby the appellate authority has rejected the petitioner's appeal filed against the order in original dated March 26, 2024 by the adjudicating authority.

2. The facts relevant for the purpose of the present petition as follows:

a. The petitioner had been issued notice of show-cause cum demand on December 27, 2023 whereby it had been alleged that the petitioner was liable to pay an amount of Rs. 2,48,92,900/- towards excess availment of Input Tax Credit (in short 'ITC'). By the said notice to show-cause the proper officer also sought for an explanation from the petitioner as to why an amount of Rs.2,30,48,532/- that had already been paid by the petitioner would not be appropriated against the total demand indicated in the notice.

b. The petitioner replied to the said notice to show-cause. However, the petitioner's reply did not weigh with the adjudicating authority and ultimately the order in original came to be passed on March 26, 2024 thereby disallowing ITC to the tune of Rs. 2,46,92,900/- and ordering appropriation of a sum of Rs. 2,30,48,532/- towards the aforesaid sum.

c. The petitioner assailed the said order in original in appeal before the appellate authority. Such appeal was filed on June 28, 2024.

d. During pendency of the petitioner's appeal, on November 1, 2024, Section 128A of the said of the said Act of 2017 was notified.

e. Subsequently, on March 27, 2025, the Central Board of Indirect Taxes and Customs (in short 'the Board') issued a circular thereby clarifying as follows:

> *"4.2 Issue 2: Whether (i) the entire amount of tax demanded is required to be discharged and (ii) the appeal is required to be withdrawn for the entire period, where notices/statements/orders issued to taxpayers, pertains to period covered partially under Section 128A and partially by those outside it.*
> *4.2.1. In cases where the notice/statement or order etc. pertains to the period partially covered under Section 128A and partially beyond the*

> *said period, Rule 164(4) and proviso to Rule 164(7) have been amended to allow the taxpayer to file an application under FORM SPL-01 or FORM SPA-02 as the case may be after making payment of his tax liability for the periods covered under section 128A. The taxpayer after filing FORM SPL-01 or FORM SPA-02 as the case may, shall intimate the appellate authority or Tribunal his intent to avail the benefit of Section 128A and that he does not intend to pursue the appeal for the period covered under the said Section i.e. FY 2017-18 to 1019-20. The Appellate Authority or Appellate Tribunal as the case may, shall after taking note of the aid request, pass such order for the period other than that mentioned in the said sub-section, as it thinks just and proper."*

f. In order to take advantage of the provisions of waiver of interest and penalty in terms of Section 128A of the said Act of 2017 read with the said circular dated March 27, 2025 issued by the Board, the petitioner made an application before the appellate authority indicating that the petitioner was desirous of availing of the benefit of waiver of interest and penalty in terms of the said provision in respect of Financial Year 2018-19. The petitioner thereafter in terms of the provisions of Section 128A of the said Act of 2017 and the said clarificatory circular of the Board, also made an application before the proper officer on June 12, 2025 seeking waiver of interest and penalty for the Financial Year 2018-19 asserting that the petitioner had discharged the tax liability for the said period.

g. The petitioner's appeal came to be considered by the appellate authority on June 23, 2025. The appellate authority rejected the petitioner's appeal without taking into consideration the communication made by the petitioner that the petitioner was desirous of availing of the benefit of waiver of interest and penalty for the Financial Year 2018-19 in terms of the provisions of Section 128A of the said Act of 2017 and that in terms of the said provisions the petitioner had already discharged the tax liability against the demand order for the said year as reflected on the GST portal.

h. The appellate authority thus disregarded the said application and rejected the petitioner's appeal.

i. On the other hand, the proper officer before whom the petitioner had made his application for waiver issued a notice to show-cause on June 20, 2025. The petitioner replied to the said show-cause on July 20, 2025 thereby providing the requisite details of payments of tax made by the petitioner in respect of the Financial Year 2018-19 and furnishing the requisite clarification as regards non-furnishing / non-submission of copy of DRC-03A.

j. The proper officer ultimately rejected the petitioner's application for waiver by observing *inter alia* that the petitioner had not furnished reply to the notice to show cause and had not submitted copy of Form DRC-03A. Interestingly while the detailed order which was uploaded on the GST portal on July 21, 2025 cites the aforesaid grounds for rejection of the petitioner's appeal, the summary order which was uploaded on October 03, 2025 clearly mentions that the petitioner had filed his reply to the notice to show cause on July 20, 2025. It is noticed that the said two orders have been uploaded by different incumbents discharging duties of the same proper officer.

3. Mr. Kanodia, learned Advocate appearing on behalf of the petitioner, submits that both the orders i.e. the appellate order passed by the appellate authority on June 24, 2025 and the order dated July 23, 2025 passed by the proper officer are bad in law. It is submitted that in terms of the provision of Section 128A of the said Act of 2017, every tax payer, who satisfies the conditions of the provisions is entitled to avail of the benefits of waiver of tax and penalty and the petitioner had accordingly applied for such benefit. It is submitted that the appellate authority did not even take into consideration the petitioner's application in such regard and has gone on to hold that the petitioner is not entitled to the benefit of waiver under Section 128A of the said Act of 2017. It is further submitted that the appellate authority has fallen in error in not

taking into consideration the fact that the petitioner had deposited the entire tax pertaining to Financial Year 2018-19 and in failing to appreciate the fact that when the order in original covered two separate Financial Years then in terms of the clarificatory circular of the Board issued on March 27, 2025, the petitioner was very well entitled to be granted waiver of tax and penalty for the period (Financial Year 2018-19). It is submitted that in the facts of the present case the appeal insofar as the same pertained to Financial Year 2018-19 should have been disposed of by allowing the petitioner an opportunity to avail of the benefits of Section 128A of the said Act of 2017.

4. It is submitted that the order passed by the proper officer dealing with the petitioner's application for grant of waiver in terms of Section 128A is again without any basis inasmuch as it would be apparent from the records that the same subject has been dealt with at two different stages of uploading orders by two different incumbents discharging duty as proper officer. It is submitted that while the reply appears to have been noted and considered by the proper officer, who uploaded the summary order, the same has starkly gone unnoticed by the other person in the seat of the proper officer, who uploaded the detailed order on July 21, 2025. It

is submitted that non-submission of reply by the petitioner has been cited more than once in the said order for rejection of the petitioner's claim. It is submitted that if the petitioner's reply to the show-cause notice had been properly considered and appreciated then the requisite clarifications provided by the petitioner could have been noticed by the proper officer in the said reply itself.

5. Mr. Banerjee, learned Advocate appearing on behalf of the respondents-CGST Authorities, submits that the orders impugned are sustainable and should not be interfered with.

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

7. Records placed before this Court reveal that the petitioner had indeed applied for availing the benefit of waiver of interest and penalty in terms of Section 128A of the said Act of 2017 and in the light of the Board's circular dated March 27, 2025 on June 12, 2025. The petitioner had notified the appellate authority of his intent and desire to avail of the benefit of waiver under the aforesaid provisions well in advance i.e. on March 31, 2025.

8. The e-mail dated March 31, 2025 (printout whereof forms Annexure 'P6' at pages 109 to 111 of this writ petition) evinces that the petitioner

had asserted that he had paid the taxes in respect of the Financial Year 2018-19 by March 31, 2025. The said e-mail also shows that the petitioner had attached with it a copy of the Board's circular dated March 27, 2025 as also as electronic liability ledger for the relevant demand ID as proof of payment of tax for the relevant period.

9. It was therefore wholly improper on the part of the appellate authority to ignore the said documents which were brought on record by the petitioner well in advance and to proceed to reject the petitioner's appeal even in respect of the Financial Year 2018-19 thereby depriving the petitioner of an opportunity to avail of the benefit of waiver in terms of Section 128A of the said Act of 2017 and the Board's circular dated March 27, 2025. The appellate order dated June 23, 2025, therefore, deserves interference to that extent.

10. Insofar as the order dated July 21, 2025 passed by the proper officer dealing with the petitioner's application for waiver is concerned, the same also appears to be a product of total non-application of mind. The proper officer has evidently failed to take into consideration the petitioner's reply to the notice to show-cause, which is recorded as having been filed on June 20, 2025, as would be evident from the summary appellate order uploaded

on October 03, 2025. The personnel acting as proper officer on the date when the summary order was uploaded has brought the correct fact on record as regards the petitioner's filing of reply to the show-cause notice is concerned, but then the same is not going to correct the damage that has already been done by the detailed order, which has proceeded on the basis that the petitioner has not submitted any reply to the notice to show-cause and has not furnished any copy of DRC-03A. In his reply to the show-cause notice, the petitioner has given an explanation as to why the requirement of submitting copy of DRC-03A would not be applicable to the petitioner's case and has given details in support of his entitlement to waiver of interest and penalty for Financial Year 2018-19.

11. Since the petitioner's reply itself has not been considered and the reasons cited by the petitioner for non-furnishing the copy of DRC-03A and the petitioner's entitlement for waiver have obviously not been noted by the proper officer while passing the order impugned.

12. In such view of the matter, the order dated July 21, 2025 passed by the proper officer, which was uploaded on the portal in summary form on October 3, 2025 also deserves to be interfered with.

13. In such view of the matter, since the appellate authority has proceeded in total disregard of the petitioner's application notifying the appellate authority about his intent to avail the benefits of waiver of interest and penalty for the period of Financial Year 2018-19 in terms of the provision of Section 128A of the said Act of 2017 and the Board's Circular dated March 27, 2025, the appellate order impugned dated June 23, 2025 shall stand set aside to the extent the same rejects the petitioner's appeal against the original order to the extent the same relates to the Financial Year 2018-19.

14. The appellate authority shall revisit the petitioner's case and his application displaying intent to avail the benefit of waiver and then consider the same in the light of the provisions of Section 128A of the said Act of 2017 as well as the Board's circular dated March 27, 2025. Needless to mention that if it is found by the appellate authority that the petitioner has indeed complied with the aforesaid provisions, the appellate authority will certainly have no choice but to allow the petitioner an opportunity to avail the benefit of waiver in terms of the said provisions.

15. Insofar as the order dated July 21, 2025 passed by the proper officer (summary form whereof was uploaded on October 3, 2025) is

concerned, the same stands set aside. The proper officer shall consider the petitioner's reply to the notice to show-cause, filed with the proper officer on July 20, 2025 and then pass appropriate orders upon giving the petitioner an opportunity of hearing.

16. Needless to mention that both the appellate authority and the proper officer, as aforesaid, shall respectively dispose of the petitioner's appeal and the application within a period of four weeks from the date of communication of this order, strictly in accordance with law.

17. It is clarified that this Court has not gone into merits of the case and all points are left open to be decided by the appellate authority and the proper officer in accordance with law.

18. WPA 24840 of 2025 stands disposed of with the above observations. 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.)