09 **24.11. 2025**

Ct. No. 551

Ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26252 of 2025

M/s. Birla Brothers Private Limited and another
Vs.
The Deputy Commissioner of Revenue,
Park Street Charge and another.

Mr. Rahul Dharuka,
Ms. Sreeje Chakraborty.
... for the petitioners.

Mr. S.K. Dutta,
Mr. Tanoy Chakraborty,
Ms. Sumita Shaw,
Mr. Saptak Sanyal.
... for the State.

1. The petitioner assails an order dated March 6, 2023 passed under Section 73 of the WBGST Act/CGST Act, 2017 (hereafter "the said Act of 2017) thereby holding the petitioner liable for tax, interest and penalty as indicated in the said order.
2. Learned Advocate appearing on behalf of the petitioners submits that the order impugned has been passed in abject derogation of principles of natural justice. He invites the attention of this Court to a printout from the relevant GST portal (Annexure 'P6' at page 62 of the writ petition) and submits that all the notices in respect of the proceeding under Section 73 of the said Act of 2017 as well as the order impugned had been uploaded on the relevant GST portal under the

"Additional Notices and Orders" tab. It is submitted that although the portal contains a main tab called "Notices and Orders" tab, yet the notices and orders were uploaded under the tab "Additional Notices and Order", which evaded the attention of the petitioners and its authorized representatives.

3. It is submitted that since the show-cause notice had also been uploaded on the portal under the same tab and not under the normal tab, the petitioner could not respond to the show-cause and the order impugned came to be passed without the petitioners getting any opportunity to file their reply to the show cause.

4. Relying on a Co-ordinate Bench judgment of this Court in case of *Sankar Agarwala vs. The Joint Commissioner of CGST and Central Excise (Appeal), Siliguri Appeal Commissionerate & Ors.*, reported at *2025(11) TMI295-Calcutta High Court*, it is submitted that in a similar situation the Court had been pleased to set aside the appellate order as well as the adjudication order and was pleased to give an opportunity to the petitioners to respond to the show-cause notice within a specified period.

5. Reliance is also placed on another Co-ordinate Bench judgment of this Court in case of *Parakh Consulting LLP vs. The State of West Bengal (WPA*

2206 of 2025, decided on November 6, 2025).

6. It is further submitted that the show-cause notice issued to the petitioners would reveal that the petitioners were not given any opportunity of personal hearing although an adverse order was evidently contemplated.
7. Mr. Chakraborty, learned Advocate appearing on behalf of the respondents, supports the action of the respondents-GST Authorities and submits that the petitioners cannot find fault with uploading of notices under the "Additional Notices and Orders" tab once service of notice by uploading the same on portal, has found statutory recognition.
8. Heard the learned Advocate appearing on behalf of the respective parties and considered the material on record. It is not in dispute that the petitioners have been served with the notices in respect of the proceeding and the order impugned only by way of uploading thereof on the relevant GST portal and not by any other mode. It is the petitioners' case that they could get to know of the notices and the order impugned only after conducting a search upon being served with a recovery notice dated October 17, 2025 (page 64 of the writ petition) through e-mail.
9. In such view of the matter, it cannot be said that the petitioners had due knowledge of the

proceedings that had been continued and concluded against them. *Sankar Agarwala* (supra) has elaborately dealt with a similar issue in the following manner:

*"8. After going through the show-cause notice issued under Section 73(*1) of the CGST Act, 2017, it is evident that an adverse decision was contemplated against the petitioner by issuing the show-cause notice.*

9. Section 75(4) of the CGST Act, 2017 states that an opportunity of hearing shall be granted where request is received in writing from the person chargeable with tax or penalty of where any adverse decision is contemplated against such person.

10. Since an adverse decision was contemplated against the petitioner by issuing a show-cause notice under Section 73(1) of the CGST Act, 2017 the Proper Officer was under a statutory obligation to afford an opportunity of hearing to the party prior to passing an order under Section 73(9) of the CGST Act, 2017.

11. It is not in dispute that the show-cause notice was issued under the "Additional Notices and Orders" Tab and not under the normal tab.

12. The Hon'ble Division Bench in the case of Ram Kumar Sinhal vs. State of West Bengal, reported at [2025] 177 taxman.com 48 (Calcutta) held that accessibility of notice only under the additional tab as opposed to the normal tab could not constitute a proper communication or uploading as contemplated in Section 73(1) of the WBGST Act read with the concerned Rules.

13. Since the show-cause notice was uploaded only under the additional tab as opposed to the normal tab, this Court is of the considered view that such uploading under the additional tab could not constitute due communication of the show-cause notice upon the petitioner against whom an adverse decision was contemplated.

14. To the mind of this Court, the petitioner was prevented by sufficient cause for not filing any reply to the show-cause notice.

15. For such reason this Court is inclined to grant a last opportunity to the petitioner to file a reply to the show-cause notice as the same forms the foundation for the order passed under Section 73(9) of the CGST Act, 2017.

16. The order dated December 14, 2023 passed by the Superintendent, CGST & Central Excise *being the respondent NO. 2 and the order of the appellate authority dated June 23, 2025 are set aside subject to the condition that the petitioner shall file the reply to the show-cause notice dated September 8, 2023 within a period of three (3) weeks from the date of receipt of a server copy of this order and if such reply is filed within the time limit as mentioned hereinbefore, the respondent NO. 2 shall, after considering the representation/reply to the show-cause pass orders in accordance with law after giving a reasonable opportunity of hearing to the petitioner or his authorized representatives, which shall be communicated to the petitioner immediately thereafter."*

10. *Parakh Consulting LLP* (supra) has also taken a similar view relying on *Sankar Agarwala* (supra).

11. This Court has no reason to take a different view. The order impugned herein dated March 6, 2023, therefore, deserves to be set aside on the same grounds on which this Court interfered with the orders impugned in *Sankar Agarwala* (supra) and *Parakh Consulting LLP* (supra) i.e. abject violation of principles of natural justice.

12. To wit, the order has been passed in violation of the provisions of Section 75(4) of the said Act of 2017 inasmuch as although the said order contemplated adverse consequences, no opportunity of personal hearing was granted to the petitioners and the petitioners have lost opportunity to represent against the show-cause notice inasmuch as the show-cause notice was not properly served upon the petitioners, as held by *Sankar Agarwala* (Supra).

13. Although an appellate remedy is available to the petitioners under Section 107 of the said Act of 2017, yet, having regard to the view taken by the Co-ordinate Bench of this Court in *Sankar Agarwala* (Supra) and *Parakh Consulting LLP* (supra), where the matters were remanded to the adjudicating authority for want of proper adjudication in the absence of proper service, this Court in the facts of the present case is not minded to send the petitioners to the appellate authority, as that would entail loss of a forum.
14. In such view of the matter, the adjudication order dated March 6. 2023 is set aside.
15. The petitioners are granted three weeks' time from date to file reply to the show-cause notice dated January 20, 2023 (page 42 of the writ petition) before the adjudicating authority. If a representation/reply to the said show-cause dated January 20, 2023 is filed by the petitioner within the time indicated hereinabove, the Adjudicating Authority shall deal with the same in accordance with law and proceed to pass a fresh order in accordance with law. The adjudicating authority shall be free to proceed with the adjudication proceedings without granting any unnecessary adjournment.
16. It is made clear that if the petitioners fail to file

their reply to the show-cause within the time as aforesaid, this order shall not enure to the benefit of the petitioners and the adjudication order shall revive.

17. It is also clarified that since the proceeding had been initiated within time and the adjudication order has been set aside on the ground of violation of principle of natural justice due to improper service, the petitioners shall not be entitled to the object to the proceedings on the ground of limitation unless such ground was (would have been) available to the petitioners at the time when the notice to show cause dated January 20, 2023 had been issued to the petitioners.

18. WPA 26252 stands disposed of with the above observations. No costs.

19. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)