

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 27101 of 2024
CAN 1 of 2025**

**Roshan Sharma
versus
Deputy Commissioner of Revenue & Anr.**

For the petitioner	:	Mr. Vinay Kr. Shraff Mr. Dev Kumar Agarwal Ms. Swarnwarshi Poddar Ms. Priya Sarah Paul
For the State	:	Mr. Md. T.M.Siddiqui, Ld. AGP Mr. T.Chakraborty Mr. S. Sanyal
Heard on	:	18.07.2025.
Judgment on	:	18.07.2025

Raja Basu Chowdhury, J. (Oral):

1. The present writ petition has been filed, *inter alia*, challenging an adjudication order passed by the proper officer on 24th July, 2024 in respect of the tax period August 2020 to March 2023.
2. Before proceeding further, I may note that the present writ petition is the second round of litigation between the parties. The petitioner claims to be a registered tax payer and is engaged in the business of trading of metals and

metal products run under the name and style of M/s ARS Metals which has an office within the State of West Bengal.

3. It is also the petitioner's case that in usual course of business the said ARS Metals had availed Input Tax Credit (ITC) on its inward supplies received from its suppliers. Following the same, the petitioner had not only availed but had also utilized the ITC. Consequent upon scrutiny and in the facts morefully stated in the order dated 1st September, 2023 while invoking Section 86A of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act") the petitioner's electronic credit ledger was blocked. Still later, a show-cause notice dated 31st November, 2023 was issued, *inter alia*, on the ground that in course of scrutiny of returns and the inward B2B supply as auto populated in GSTR 2A for the period 2020-21, 2021-22 and 2022-23, it was detected that the petitioner had claimed and utilized ITC against the inward supplies from Sri Shyam Sundar Tiwari having trading name, M/s Rachna Trading Co., whose registration had been cancelled *suo moto* from the date of registration under Section 29(2)(e) of the said Act and further since it was detected that the said Shyam Sundar Tiwari had no business activity or existence at the address of the place of business since inception and was non-existent, the ITC having been availed by the petitioner on the strength of fake tax invoices and fake e way bills, the petitioner was called upon to respond.
4. Although, the petitioner had participated in such proceedings, and though in such proceedings the statement of proprietor of M/s Rachna Trading Co. was relied on, *inter alia*, including the statement of one Ashoke Kumar Saha, a transporter, an adjudication order was passed without making such documents available to the petitioner and / or without affording the

petitioner with an opportunity to cross-examine the above persons. A writ petition had since been filed by the petitioner questioning the aforesaid action, which was registered as WPA 8390 of 2024. Since, the writ petition was dismissed, an appeal was filed. The Hon'ble Division Bench of this Court by order dated 7th May, 2024 considering the fact that the appellant had not been provided with an opportunity to cross examine Sri Shyam Sundar Tiwari or Ashoke Kumar Saha and the statement recorded from them were not furnished to the petitioner, which forms basis of the order, while remanding the matter for a fresh decision, the Court directed the proper officer to afford the petitioner with the copies of the statement of both Sri Shyam Sundar Tiwari and Ashoke Kumar Saha and if the petitioner requests for cross examination of these persons, to permit the petitioner to cross-examine and thereafter to decide the cause.

5. In furtherance to the aforesaid, a remand notice was issued by the proper officer on 16th May, 2024 along with an attachment. In such remand notice, an additional disclosure had been made as regards the involvement of one T. Venkat Rao who, according to the respondents, was involved in generating fake invoices. By such remand notice, the declaration / Statement of Sri Shyam Sundar Tiwari and Ashoke Kumar Saha was disclosed and it was noted that the petitioner had previously been communicated with such declarations. Additionally, it was claimed that the Chattered Accountant who audited the accounts of M/s Rachna Trading Co., for the relevant financial year, had also made a statement. Along with the aforesaid notice, a complaint lodged with the Learned Additional Chief Judicial Magistrate, Sealdah was also enclosed. Still later by a subsequent email communication dated 6th June, 2024, a report and a declaration of

an owner of a vehicle were also disclosed. Incidentally, the petitioner had responded to the above remand notice on 12th June, 2024 and had clarified its position. Along with such response the petitioner had disclosed additional materials in the form of Toll plaza reports in respect of two transport vehicles. At that stage, no request was made by the petitioner for cross examination of any other persons.

6. On 14th June, 2024 Mr. Vikash Kumar Banka, Chartered Accountant represented the petitioner before the proper officer and sought for cross examination of not only Sri Shyam Sundar Tiwari, T. Venkat Rao and the vehicle owners Ashoke Kumar Saha and Kalpana Jaiswal but also the Chartered Accountant, and that of any other person who had given statement in the case. On the request of the petitioner's representative, a cross examination was offered and the petitioner/his representative duly cross examined Sri Shyam Sundar Tiwari and Ashoke Kumar Saha. Incidentally, when Sri Shyam Sundar Tiwari was re-examined, the petitioner's representative refused to be present and left the examination room without signing the note sheet on 5th July, 2024, on the ground that the directives of the Hon'ble Division Bench of this Court did not permit re-examination.
7. In this context, it may be noted that the petitioner had also requested the authorities to verify the toll movement of all the vehicles involved, before deciding the matter. The matter was subsequently heard on 10th July, 2024. From the minutes recorded on 10th July, 2024 it would transpire that the petitioner's representative did not want to add any other statement apart from whatever was there on record. However, by letter dated 15th July, 2024 additional documents were disclosed by the petitioner. The

above culminated in the adjudication order dated 24th July, 2024. No steps were taken by the petitioner for immediately challenging the order dated 24th July, 2024. After expiry of the ordinary period for preferring an appeal, the instant writ petition had been filed on 11th November, 2024. Records would reveal that by an order dated 6th December, 2024 a Coordinate Bench of this Court while directing exchange of affidavits, was pleased to record that the maintainability of the writ petition was kept open. No interim order had been passed.

8. The matter was subsequently mentioned complaining that the respondents were proceeding with execution of the above order and seeking to recover the demand. An application being CAN 1 of 2025 was also filed. It is on such premise and considering the urgency involved, the above matter has been taken up for consideration.
9. Mr. Shraff, learned advocate appearing for the petitioner has taken me in detail through the records of the case, *inter alia*, including the order passed by the Hon'ble Division Bench of this Court. He submits that in the instant case despite being called upon, the authorities had failed to offer the petitioner with the toll plaza records in respect of 26 other transport vehicles employed by the petitioner. According to him, it is the obligation of the proper officer to take note of the toll plaza records before arriving at a decision that the petitioner had indulged in fake transactions. In support of the aforesaid contention, he has placed reliance on the judgments of the Hon'ble Supreme Court delivered in the cases of ***Granules India Limited v. Union of India and others***, reported in **(2021) 20 SCC 419** and ***Popatrao Vyankatrao Patil v. State of Maharashtra and others***, reported in **(2020) 19 SCC 241**. According to him, the aforesaid order

suffers from failure of justice since the authorities had failed to afford the petitioner with the opportunity to cross examine all the transporters. At least, transporters and the persons who had made statements which were relied on by the respondents in the show-cause ought to have been produced for cross-examination by the petitioner. Having regard thereto, he submits that the order should be set aside and the matter should be remanded back to the proper officer for re-adjudication.

10. Mr. Chakraborty, learned advocate appearing for the State, has also taken me through the details of the proceedings and submits that admittedly, in this case, the petitioner was afforded with an opportunity of hearing. The petitioner was supplied with all particulars and documents including the statements. Still later, the petitioner was afforded with an opportunity to cross examine. Incidentally, according to him once, the petitioner refused to participate in the process of re-examination, the petitioner lost all further right to cross examine any further or other persons. In any event, it is submitted that the proper officer had duly considered the contentions raised by the petitioner and has dealt with the matter in detail. It is only thereafter, an adjudication order was passed. Despite the fact that the petitioner has an appellate remedy, the petitioner chooses not to avail the same. Instead, he has filed the instant writ petition. As such, no relief should be afforded to the petitioner.

11. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I notice that pursuant to the order dated 7th May, 2024, a remand notice dated 16th May, 2024 was issued. It may be noted that in course of remand, not only the documents called for but further additional documents were also supplied to the

petitioner. The initial response filed by the petitioner on 12th June, 2024 did not include any request for cross-examination.

12. Subsequently, on 14th June, 2024 in course of hearing the petitioner's representative had sought for cross examination of not only the two persons for whom leave was granted by the Hon'ble Court by order dated 7th May, 2024, but of all other persons noted in the minutes of the proceedings dated 14th June, 2024. Records would reveal that the petitioner was duly afforded with an opportunity to cross examine both Sri Shyam Sundar Tiwari and Ashoke Kumar Saha. Incidentally, when Sri Shyam Sundar Tiwari was recalled by the authorities for re-examination, the petitioner's representative refused to participate in the re-examination, and left without signing the note sheet.
13. It is a matter of record that apart from the aforesaid two persons, no other persons were permitted to be cross-examined. The fact that the petitioner's representative had opposed the re-examination and had not participated in the same, would corroborate from the minutes of the proceedings dated 5th July, 2024, *inter alia*, including the email communication dated 8th July, 2024. Still later, a further hearing was given to the petitioner on 10th July, 2024 and in course of such hearing Mr. Banka, the representative of the petitioner had clarified that he had nothing to add though, on 15th July, 2024 certain additional documents had been disclosed by the petitioner. I find although, the petitioner would complain that the petitioner had been denied the opportunity to cross examine, it may be noted that the petitioner's representative himself had refused to participate in the re-examination process. If the petitioner chose not to participate in the re-examination and refused to sign the note sheet, the petitioner cannot

complain of not being afforded opportunity to cross-examine other witnesses. In my view, the order passed by the proper officer takes into consideration the entirety of the stand taken by the petitioner and deals with the response given by the petitioner in detail. From a perusal of the same, it cannot be said that the order is perverse. Regarding reevaluation of the evidence on record, I am afraid that this Court in exercise of its writ jurisdiction is not required to look into the same. The petitioner chose not to approach the appellate authority, instead he had approached this Court by giving a go-by to the appellate provision. Although, the petitioner strongly argued that it was the obligation of the proper officer to ascertain the toll plaza reports before holding the petitioner guilty of having availed ITC on the basis of fake transactions, I may note that it was the initial obligation of the petitioner to place such documents.

14. In my view, ordinarily the obligation to prove a fact remains with the person who alleges the same. Since, the petitioner in this case seeks to claim that the vehicles which were employed by the petitioner, had transported the goods, it was the obligation of the petitioner to provide documents, *inter alia*, including the documents in the form of toll plaza reports to establish and prove such fact. The petitioner having not discharged his onus, the same could not be thrust upon the State by holding out that it is the obligation of the State to do so. The judgment in the case of **Granules India Limited** (*supra*) was delivered in different set of facts and the matter relates to Customs Act. Unlike the facts of the above case the petitioner has not been able to demonstrate that the proper officer was in possession of any other additional documents including the toll plaza reports. As such the respondents cannot be directed to consider any document which is not

in their custody. Having regard thereto, the aforesaid judgment does not assist the petitioner at all. Similarly, the judgment delivered in the case of ***Popatrao Vyankatrao Patil*** (*supra*) is also distinguishable. The case pertains to a public auction undertaken by the State. The appellant was awarded the tender, however, possession of the sand block where the appellant was granted excavation right was not delivered though, the entire cost was deposited. The prayer for refund of the auction amount was rejected. It is in that context, the Hon'ble Supreme Court observed that the State should act as a model litigant. The above case does not assist the petitioner.

15. The petitioner has failed to make out any case of jurisdictional error for less any illegally or irregularly committed by the proper officer.
16. Accordingly, the writ petition along with its connected application being CAN 1 of 2025 fails and is dismissed without any order as to costs.
17. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
A.R. (Court)