11 **08.12. 2025**

Ct. No. 551

Ab

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 26900 of 2025

M/s. Kalindee Rail Nirman (E) Limited
and another
Vs.
The Senior Joint Commissioner of Revenue, Kolkata South Circle and others.

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

Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal.
... for the State.

1. This writ petition is directed against an order dated April 24, 2024 passed by the Senior Joint Commissioner of Revenue, Kolkata South Circle, under Section 73 of the WBGST Act, 2017/CGST Act, 2017 (in short 'said Act of 2017). It is recorded that Mr. Kanodia has not pressed prayer (f) in the writ petition which pertains to challenge of the vires of notifications dated March 31, 2023 and December 31, 2023 issued by the Central Board of Indirect Taxes and Customs.
2. The case run in the writ petition may briefly be noted. Initially a scrutiny notice in Form ASMT-10 was issued to the petitioners on July 13, 2023. The petitioners responded to the same. However, the petitioners remained unaware of the subsequent

notices, i.e. the pre-show-cause notice in Form DRC 01A as well as the show-cause notice under Section 73 of the said Act of 2017 as the same were uploaded on the GST portal under the "additional notices and orders" tab. It is the further case of the petitioners that the order of demand along with summary order in Form DRC 07 were also not properly served upon the petitioners inasmuch as the same were also uploaded on the GST Portal under the "additional notices and orders" tab. The petitioners contend that since all the aforesaid notices and orders i.e. the pre-show-cause notice in Form DRC 01A, the show-cause notice under Section 73 of the said Act of 2017 as well as the demand order were uploaded on the GST Portal under the "additional notices and orders" tab therefore, the petitioners remained unaware of the same and could neither participate in the adjudication proceeding nor assail the adjudication order timely.

3. The petitioners have further contended that the petitioners for the first time became aware of the proceedings and the demand order only upon recovery being made from the petitioners' electronic cash ledger on July 31, 2025 after issuance of a recovery notice in Form DRC 13 to the petitioners' Bank.

4. Mr. Kanodia, learned Advocate appearing on behalf of the petitioners, submits that it is unusual for notices and orders pertaining to the main adjudication proceeding to be served by uploading thereof on the GST Portal under the “additional notices and orders” tab and that such uploading in fact evaded notice of the petitioners. It is submitted that the petitioners had no reason to open and check the said “additional notices and orders” tab and as such the said notices and orders were not in the knowledge of the petitioners.
5. It is further submitted that by the time, the petitioners got knowledge about the adjudication order dated April 24, 2024 being passed, the time for preferring an appeal thereagainst before the appellate authority had already lapsed.
6. Mr. Kanodia further submits that in any event, the notice to show-cause dated December 19, 2023 is clearly illegal and deserves to be set aside since the same negates any opportunity of personal hearing to the petitioners despite the same being mandated by the statute. It is further submitted that the adjudication order that has been passed on the basis of such show cause notice, is violative of the principles of natural justice and it also militates against the mandate of Section 75(4) of the said Act of 2017 and therefore the same cannot be

sustained. In support of his submissions, Mr. Kanodia relies 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., (WPA 2116 of 2025)*, decided on November 3, 2025 and submits that in the said case, in a similar situation a Co-Ordinate Bench of this Court had been pleased to provide an opportunity to the petitioners therein to respond to the show-cause notice within a specified period, upon setting aside both the appellate order as well as the adjudication order.

7. Mr. Chakraborty, learned Advocate appearing on behalf of the respondents, has little resistance to offer in the facts of the present case.

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

9. It is not in dispute that the notices pertaining to the proceedings under Section 73 of the said Act of 2017 as well as the order passed by the adjudicating authority were sought to be served upon the petitioners only through the mode of uploading thereof on the relevant GST Portal under the “additional notices and orders” tab. It is the petitioners’ case that they got to know about the

notice only after amounts were deducted from their electronic cash ledger on July 31, 2025 subsequent to recovery notice being issued to the petitioners' bank.

10. In such view of the matter, it cannot be said that the petitioners had due knowledge about the proceedings and/or the adjudication order passed against them at any time proximate to the issuance thereof.

11. *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 4 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 or 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 5

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."

12. Having regard to the identity of the facts of this case with those of *Sankar Agarwala* (supra) insofar as the manner of service of notices and orders and the manner of conclusion of adjudication proceedings without hearing the petitioners are concerned, this Court has no reason to take a different view than the one taken in *Sankar Agarwala* (supra).

13. In the case at hand too, the order impugned has been passed without affording any opportunity of hearing to the petitioners, despite the fact that an adverse decision was contemplated. Uploading of notices and orders under the "additional notices and orders" tab in the GST portal has been found by this Court in *Sankar Agarwala* (supra) to be improper service.

14. Accordingly since the order dated April 24, 2024 was neither appropriately served nor was it passed in accordance with the provisions of Section 75(4) of the said Act of 2017, therefore the same is set aside.

15. The petitioners shall now have two weeks' time from date to file their reply to the show-cause notice dated December 19, 2023 (Annexure 'P4' at pages 63-67 of the writ petition). The adjudicating authority i.e. the respondent no. 1 shall proceed to conclude the proceedings as early as possible and preferably within a period of four weeks from the date of filing of reply by the petitioners, to the show-cause notice as aforesaid without granting any unnecessary adjournment.
16. WPA 26900 of 2025 stands disposed of.
17. There shall, however, be no order as to costs.
18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Om Narayan Rai, J.)