06.08.2025
Item No.
AD 11
Saswata

WPA 30862 of 2024
CAN 1 of 2025

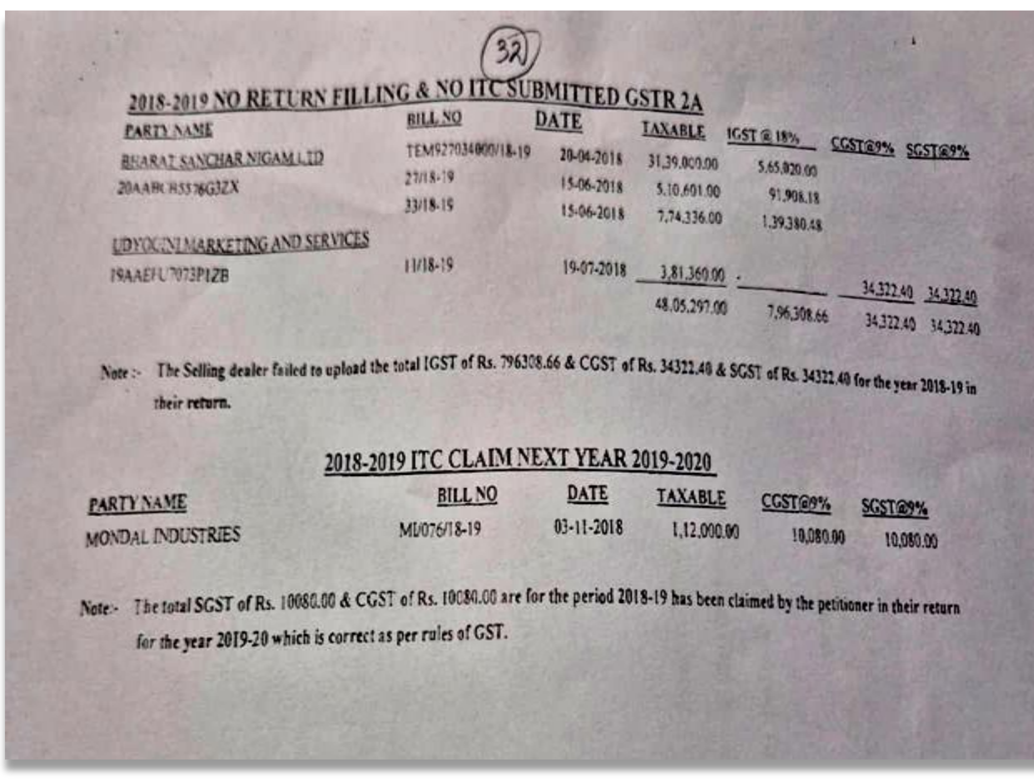
Rabin Sarkar,
Proprietor of Dolphin Enterprises
versus
Deputy Commissioner of Revenue, State Tax & Ors.

Mr. Arya Das
Mr. Amit Kumar Shaw
...For the petitioner
Mr. Sanajit Ghosh
Mr. Siddharth Gupta
...For the BSNL
Mr. T.Chakraborty
Mr. Saptak Sanyal
...For the State

1. The instant writ petition has been filed not only challenging the appellate order passed under Section 107 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") but also praying for a refund of Rs. 1,67,974/- which the petitioner claims to have been illegally recovered from the petitioner's cash ledger as would corroborate from the intimation provided to the petitioner on 8th December 2024. Upon going through the records, it would transpire that the petitioner has suffered an order under Section 73 of the WBGST /CGST Act, 2017 for the tax period 2018-19 on account of the petitioner's supplier / seller, in this case being the added respondents not correctly paying the Input Tax

Credit and / or in not uploading the same in form GSTR – 1, for the relevant period.

2. Mr. Das, learned advocate appearing for the petitioner by drawing attention of this Court to the statement which is annexed at page 32 of the writ petition submits that the purchases made by the petitioner from the added respondents (BSNL) attracted IGST for the following transactions as noted below:



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2018-2019 NO RETURN FILLING & NO ITC SUBMITTED GSTR 2A

PARTY NAME	BILL NO	DATE	TAXABLE	IGST @ 18%	CGST@9%	SGST@9%
BHARAT SANCHAR NIGAM LTD	TEM927034000/18-19	20-04-2018	31,39,000.00	5,65,020.00		
20AABCH5576G3ZX	27/18-19	15-06-2018	5,10,601.00	91,908.18		
	33/18-19	15-06-2018	7,74,336.00	1,39,380.48		
UDYOGINI MARKETING AND SERVICES						
19AAEFU7073P1ZB	11/18-19	19-07-2018	3,81,360.00	-	34,322.40	34,322.40
			48,05,297.00	7,96,308.66	34,322.40	34,322.40

Note :- The Selling dealer failed to upload the total IGST of Rs. 796308.66 & CGST of Rs. 34322.40 & SGST of Rs. 34322.40 for the year 2018-19 in their return.

2018-2019 ITC CLAIM NEXT YEAR 2019-2020

PARTY NAME	BILL NO	DATE	TAXABLE	CGST@9%	SGST@9%
MONDAL INDUSTRIES	MI/076/18-19	03-11-2018	1,12,000.00	10,080.00	10,080.00

Note:- The total SGST of Rs. 10080.00 & CGST of Rs. 10080.00 are for the period 2018-19 has been claimed by the petitioner in their return for the year 2019-20 which is correct as per rules of GST.

3. By placing before this Court a certificate issued by the competent authority of the BSNL, he would submit that the BSNL has admitted to have committed an inadvertent mistake in not making payment of Rs.5,65,020/- earlier. Such payment has only been made in Form GST DRC -03 on 21st March 2025. Let a copy of the aforesaid undated communication duly

countersigned by the chartered accountants of the BSNL as placed before this Court be retained with the record.

4. By placing before this Court a communication dated 31st July, 2025 issued by the Additional Commissioner & Charge Officer, Shibpur charge, it is submitted that a sum of Rs.91,908 /- has already been accounted for and acknowledged by the respondents. A copy of the aforesaid communication as forwarded to the petitioner by the concerned Additional Commissioner & charge Officer, Shibpur charge is taken on record. Mr. Das would, however, submit that the only other issue is with regard to non-payment of IGST to the extent of Rs.1,39,380/- by BSNL as would appear from the statement disclosed above. According to him, the petitioner is being unnecessarily saddled with the tax component for failure on the part of the BSNL to comply with its statutory obligation towards payment of tax.

5. Having regard to the submission made in Court today and since Mr. Chakraborty, learned advocate appearing for the State would confirm the fact that both Rs.5,65,020/- and Rs.91,908.18/- have already been paid by the BSNL, though he would contend that Rs.

5,56,020/- has been deposited by the BSNL for a different tax period, I am of the view that the BSNL having belatedly made payment of such sum in form GST 03 dated 21st March, 2025 as admitted by Mr. Ghosh, learned advocate for the BSNL in respect of supplies effected to the petitioner, BSNL should take appropriate steps to rectify the mistake unless the same has already been rectified. In this regard, the respondents are directed to assist BSNL.

6. Insofar as recovery of Rs.1,67,974/- from the petitioner's credit ledger is concerned, I am of the view that having regard to the peculiar facts noted hereinabove, the order passed by the respondents may be required to be revisited, though Rs. 139380.48/- payable by BSNL is yet to be accounted for.

7. As such, while setting aside the order dated 12th November 2024, I remand the matter back to the appellate authority. Recovery already made by the appellate authority shall be recredited to the petitioner's credit ledger forthwith in any event, not later than two weeks from the date of communication of this order.

8. Insofar as payment of Rs.139380.48/- is concerned, in my view, since the advocate for BSNL has acknowledged that BSNL had effected

supplies to the petitioner, BSNL cannot be permitted to absolve itself of the statutory liability to make payment of CGST/IGST as the case may be. The BSNL authorities are accordingly directed to pay the same unless such payment has already been made.

9. With the above directions and observations, the writ petition is dispose of.

10. 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.)