

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1596 of 2025

**Rajesh Joysowal
-versus
The State of West Bengal & Ors.**

For the petitioner	:	Mr. Promit Majumdar Mr. Rakesh Mishra Ms. Rinka Chakraborty
For the State	:	Mr. Subir Kumar Saha, AGP Ms. Rima Sarkar
Heard on	:	13.08.2025.
Judgment on	:	13.08.2025

Raja Basu Chowdhury, J. (Oral):

1. Challenging the order dated 11th January 2024 passed by the appellate authority under Section 107 of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.
2. Mr. Majumdar, learned advocate appearing for the petitioner has drawn the attention of this Court to the show cause issued in form GST DRC – 01 dated 12th April 2023 for the period from 1st July 2017 to 31st March 2018. By referring to the discrepancy no. 2 he submits that when the aforesaid discrepancy was first notified in a

proceeding under Section 61 of the said Act in Form GST ASMT 10 intimating short payment of tax on inward supply (RCM) amounting to Rs.176,905/-, the petitioner had duly clarified its position by indentifying payment of tax in form GST DRC -03 dated 6th February, 2020. Consequent thereupon, when the show cause notice was issued by considering the response given by the petitioner, the claim on account short payment of tax was dropped since it was noted that the petitioner had made payment in Form GST DRC – 03 on 6th February 2020. However, since there was outstanding liability by reason of delayed payment, the petitioner was called upon to make payment of interest amounting to Rs.69,800/- on IGST on account of late payment of applicable tax.

3. According to Mr. Majumdar, once an issue is dropped in the show cause and confirmed in the order passed under Section 73 of the said Act, the same could not have been included by the appellate authority on an appeal filed by the petitioner from a determination made under Section 73 of the said Act. In this context, by referring to the order of the appellate authority dated 11th January 2024 he submits that the appellate authority had added back the said demand, inter alia, on the ground that such payment was wrongly made by showing place of supply as Uttar Pradesh instead of West Bengal and accordingly, the appellate authority held that such amount had remained unpaid, though in fact, the petitioner had paid the same.

4. Independent of the above, he submits that insofar as discrepancy no. 1 is concerned which forms part of the show cause, the same though confirmed by the proper officer in the order determining liability under Section 73 of the said Act insofar as the same relates to excess availment of ITC amounting to Rs.43,79,728.73/-, however, the appellate authority had accepted the explanation provided by the petitioner by re-verifying the returns filed by the petitioner in Form GSTR – 3B, the annual returns in form GSTR – 9 and the returns filed in form GSTR – 9C with the auto generated statements in form GSTR – 2A and came to the conclusion that the case of excess availment of ITC on account of IGST to the extent of Rs.43,79,728.73/- does not arise.
5. Notwithstanding the above and despite acknowledging that the petitioner had not availed excess ITC, the appellate authority on the basis of perusal of the records had noted that the petitioner had made reversal of tax (IGST) to the tune of Rs.2,04,203/- for the period 2017-18 through form GST DRC – 03 on 6th February 2020 and accordingly has held the petitioner liable for payment of interest, for having paid IGST of Rs.2,04,203/- after the due. According to Mr. Majumdar the aforesaid determination could not be enlarged by the appellate authority by incorporating fresh demand that too without issuance of show cause under Section 73 or Section 74 of the said Act as the case may be. Independent of the above, it is submitted that the petitioner has been denied the

benefit of ITC for the petitioner having filed the returns beyond the original prescribed period.

6. According to him having regard to the provision contained in Section 16(5) of the said Act, the above demand is no longer sustainable as admittedly, the returns filed by the petitioner in form GSTR 3B under Section 39 of the said is within the extended period as provided for under Section 16(5) of the said Act.
7. Ms. Sarkar, learned advocate appearing for the respondents submits that though in the show cause notice under discrepancy no. 2, the amount of Rs.1,76,905/- was shown to have been paid vide form GST DRC – 03 dated 6th February 2020, however, the fact remains that such payment was made by the petitioner showing supply at Uttar Pradesh instead of West Bengal and as such, the appellate authority had rightly determined the aforesaid amount to be payable by the petitioner.
8. On the question of the appellate authority holding the petitioner liable as regards belated reversal of tax (IGST) to the extent of Rs.2,04,203/- for the period 2017-18 is concerned, Ms. Sarkar submits that there is no irregularity on the part of the appellate authority in determining the same. The fact that the reversal of IGST has been belatedly made, has not been denied. On the issue of denial of ITC by reasons of the petitioner having filed the return in GSTR 3B beyond the prescribed period, she acknowledges the fact that having regard to the provision contained in Section 16(5) of

the said Act, such demand can no longer be sustained, though the appellate authority cannot be faulted for having passed the order, since the order was passed on the basis of the law as was subsisting.

9. Having heard the learned the advocates appearing for the respective parties and having considered the materials on record, I notice that although, the proper officer had accepted the payment made by the petitioner under discrepancy no.2 on the basis of explanation provided by the petitioner and the petitioner was duly saddled with the interest for delayed payment in the show cause which was also confirmed in the order passed under Section 73 of the said Act, however, the appellate authority had, *suo motu*, discounted the payment on the ground that such payment in form GST DRC – 03 was made by showing place of supply as Uttar Pradesh instead of West Bengal. I, however, find that the aforesaid procedure adopted by the appellate authority is not sustainable especially having regard to the provision contained in Section 75(7) of the said Act. In any event, if the appellate authority was of the view that the aforesaid demand ought to have been made, an opportunity in this regard ought to have been afforded to the petitioner by issuing a separate show cause notice in terms of the second proviso to Section 107(11) of the said Act.
10. Ordinarily, I would have been inclined to direct the authorities to treat the aforesaid appellate order as a show cause, however having

regard to the fact that the outer time limit for issuing a show cause for determination having expired long back, there is no scope, in my view, to saddle the petitioner with any fresh liability which did not form part of the original show cause. The demand raised therein in my view cannot be sustained and is accordingly set aside. Similarly on the identical ground the fastening of liability by the appellate authority by adding a sum of Rs.2,04,203/- on account of excess availment of ITC is also not sustainable for reasons noted herein below. The petitioner has initially been issued a show cause notice for having availed excess ITC to the tune of Rs.43,79,728.73/-. Incidentally, although the proper officer while passing the order under Section 73 of the said Act had confirmed such demand, however, on an appeal being filed, the appellate authority upon scrutinizing the returns filed by the petitioner in form GSTR 3B under Section 39 of the said Act and the annual returns filed in form GSTR 9 along with statements in form GSTR 2A and other returns, had come to the finding that the same was by reason of a simple clerical mistake on the part of the appellant in not incorporating the figure of ITC under the head 'IGST' for a sum of Rs.43,79,729/- in the right column of the returns of GSTR 3B. It was detected from the GST portal by the appellate authority that IGST on import of Rs.43,79,729/- was shown in return GSTR 3B in row A(1) in place of all other ITC in row A(5). Such mistake was rectified in the annual return in form GSTR 9 for the concerned

year. Accordingly, the appellate authority held that the demand raised regarding ITC which was found to have been availed in excess to the extent of Rs.43,79,729/- as IGST, could not survive.

11. Unfortunately, the appellate authority while scrutinizing the records, had added excess availment of ITC in the demand on the ground that the petitioner had made reversal of tax (IGST) to the tune of Rs.2,04,203/- for the period 2017-18 in form GST DRC – 03 on 6th February 2020 for the month of November 2017 and January 2018 for which reason the IGST credit availed was in excess. Though, there appears to be some incongruity in such finding, however, as rightly pointed out by Mr. Majumdar, this point did not form part of the show cause notice. Although, having regard to the provision contained in the second proviso to Section 107(11) of the said Act, the aforesaid amount could have been incorporated by way of issuing a show cause, however, since the time for issuing a show cause has expired, the aforesaid determination to the above extent also cannot be sustained and is accordingly set aside.

12. Insofar as the issue of ITC found to be reversible in respect of the claim made by the petitioner by filing returns in form GSTR 3B beyond the prescribed period is concerned, since the petitioner is unable to identify the exact date on which the return has been filed, though in terms of Section 16(5) of the said Act, the last date of filing the return was extended upto 30th November, 2011, for the

tax period under consideration, I am of the view that no relief can be afforded at this stage.

13. The respondents are directed to revise the demand raised in form GST APL – 04 on the basis of the aforesaid order and if having regard to Section 16(5) of the said Act the petitioner is entitled to the benefit thereof insofar as discrepancy no. 4 is concerned, appropriate benefit should be afforded. All consequences shall follow.
14. The writ petition is accordingly disposed of.
15. 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)**