

D/L - 12
27/10/2025
Court. No. 2
Aritra

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

WPA 1825 of 2025

**Stores Cement through its partner
Saugata Sarkar
Vs.
State of West Bengal & Ors.**

Mr. Antik Majumder
Mr. Anurag Sharma

....for the petitioner

Mr. Joyjit Chowdhury, Ld. A.A.G.
Ms. Rima Sarkar
Mr. Momenur Rehman

....for the State

Mr. Ratan Banik
Mr. Biswa Raj Agarwal

....for the respondent No.2

This application under Article 226 of the Constitution of India is at the instance of a distributor and is directed against an Order-in-Original dated November 19, 2024 passed by the Deputy Commissioner, Jalpaiguri Charge, Jalpaiguri under Section 74 of the West Bengal Goods and Services Tax, 2017 for the period of 2022-2023.

The learned advocate appearing for the petitioner submits that the very foundation of the Order-in-Original dated November 19, 2024 is an inspection being carried out under the provisions of Section 67(1) of the WBGST Act by a team of officials of the State authorities on February 24, 2023.

The learned advocate for the petitioner places reliance upon the provisions of Section 67 (1) of the WBGST Act, 2017 in

support of his contention that the inspection search and seizure has to be carried out only after recording reasons to believe in writing that a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand or has claimed input tax credit in excess of his entitlement under the said Act.

The learned advocate for the petitioner further submits that the inspection report was prepared during the course of the search and seizure and, therefore, there could not have been any reasons to believe for conducting the inspection search and seizure. He further submits that no authorization in the prescribed manner was also made as prescribed under Rule 139 of the WBGST Rules.

The learned advocate for the petitioner submits that the authority, while passing the Order-in-Original dated November 19, 2024, relied upon the seized documents. He submits that the copies of the relied upon document were not supplied to the petitioner which resulted in gross violation of the principles of natural justice. He further submits that the availability of an alternative remedy cannot be an absolute bar as an aggrieved party can approach the Writ Court if there has been violation of the principles of natural justice or the order impugned has been passed without having jurisdiction.

Heard the learned advocate for the State and CGST authorities on such submission.

After going through the materials on record, this Court finds that the inspection was conducted sometimes on February 24, 2023. It is not in dispute that an appeal lies against the Order-in-Original

dated November 19, 2024 passed by the Deputy Commissioner, Jalpaiguri Charge, Jalpaiguri.

The petitioner has approached the Writ Court on the ground that there has been gross violation of the principles of natural justice and the provisions of the relevant statute. The Order-in-Original was passed on November 19, 2024. Against the said Order-in-Original an appeal lies under the provisions of Section 107 of the 2017 Act.

Section 107 (1) of the said Act states that such an appeal has to be preferred within three months from the date on which the decision or order is communicated to such person. Sub-Section (4) of Section 107 of the said Act states that the appellate authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, may allow it to be presented within a further period of one month.

The instant writ petition has been filed only on August 25, 2025 i.e., well beyond the statutory period of limitation as well as the period specified under Section 107 (4) vesting power upon the appellate authority to condone the delay.

The learned advocate appearing for the petitioner would contend that the appeal could not have been preferred within the statutory period of limitation as the father of the petitioner was ill at the relevant period of time.

On a query of the Court the learned advocate appearing for the petitioner, in his usual fairness, submits that no document has been annexed in the writ petition to show that the petitioner at any

relevant point of time approached the original authority for supplying the relied upon documents to the petitioner.

After going through the Order-in-Original it appears that the petitioner did not raise any objection regarding non-supply of relied upon documents before the original authority at the time of hearing.

The petitioner, however, participated in the proceedings before the original authority and made submissions on merits without ventilating his grievances that he is not in possession of the copies of the relied upon documents. That apart, the writ petition was filed long after the expiry of the period of limitation.

After going through the order impugned, this Court finds that certain factual issues were involved in such adjudication. The Writ Court in exercise of its power under Article 226 of the Constitution cannot act as the appellate court.

It is well-settled that a writ petition cannot be entertained only because the same has been filed after the statutory period of limitation has lapsed when the order under challenge is an appealable one. That apart, the petitioner has challenged the very basis of the inspection which took place on February 24, 2023. A challenge against an inspection that was conducted way back in February 2023 in this writ petition which was filed on August 25, 2025 cannot be entertained as the petitioner has not explained the reasons for the delay between the period from February 24, 2023 till the passing of the Order-in-Original in the writ petition.

For all the reasons as aforesaid, this Court is not inclined to entertain this writ petition.

At this stage, the learned advocate appearing for the petitioner, on instruction, submits that the petitioner intends to

approach the appellate authority for challenging the Order-in-Original dated November 19, 2024 and the appellate authority be directed to condone the delay as some time has been consumed due to the pendency of this writ petition.

The learned Additional Advocate General submits that the petitioner be directed to file an application for condonation of the delay before the appellate authority.

However, since the writ petition was filed and some time was consumed due to the pendency of this writ petition, this Court is inclined to allow the petitioner to approach the appellate authority within a period of 30 days from the date of receipt of a server copy of this order. If the appeal is preferred within the time limit indicated hereinbefore, the appellate authority shall consider the appeal on its merit without dismissing the same on the ground of limitation. It is however, made clear that the appeal shall be entertained only upon the petitioner fulfilling the conditions for pre-deposit as stipulated under Section 107(6) of the WBGST Act.

It is, however, made clear that this Court has not entered into the merits of the claims and counter-claims of the respective parties and the observation made hereinbefore are only to support the ultimate conclusion.

With the above observation this writ petition is disposed of.

All parties shall act with the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)