IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT 86 of 2025
With
IA No.: CAN 1 of 2025

Mphasis Engineers Co-operative Contract and Construction Society Ltd.
Vs.
The Senior Joint Commissioner, State Tax, Jalpaiguri & Ors.

For the appellant :Mr. Prosenjit Das, Advocate(through VC)
Mr. Debanjan Das, Advocate

For the State : Mr. Pretom Das, Advocate
Ms. Rima Sarkar, Advocate

Heard & Judgment on : November 19, 2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of an assessee and directed against order dated August 19, 2025 passed in WPA 1608 of 2025.
2. By the impugned order, learned Single Judge invoked the provisions of Section 112 of the WBGST/CGST Act, 2017.
3. Learned Advocate appearing for the appellant submits that, there is a issue of jurisdiction with regard to the authorities invoking the provisions

of the Act, 2017 on such point. He submits that, no show-cause notice was issued. Therefore, the assumption of jurisdiction was incorrect.

4. On merits, learned Advocate appearing for the appellant submits that, appellant already deposited amount which is presently sought to be claimed. According to him, requiring the appellant to make a pre-deposit for the purpose of filing the appeal would be onerous and is unfounded.
5. In support of his contentions, learned Advocate appearing for the appellant relies upon ***(2024) 122 GSTR 59 (Jai Venktesh Concast Private Limited and another vs. Deputy Commissioner of State Tax, ITC Investigation Unit and others*** and the order dated **March 21, 2025** passed by the Hon'ble Supreme Court in ***Special Leave Petition (Civil) Diary No.6332/2025 (Central Board of Indirect Taxes and Customs versus M/s Aberdare Technologies Private Limited & Ors.)***.
6. Learned Advocate appearing for the appellant submits that, the Tribunal contemplated under the provisions of WBGST/CGST Act, 2017 is yet to be constituted. Therefore, the appellant is entitled to file and maintain the writ petition.
7. Respondents authorities are represented.
8. We are considering an appeal directed against an interim order passed in a writ petition filed at the behest of the appellant.
9. This is the second round of litigation at the behest of the appellant.

10. First round of litigation was at the behest of the appellant by way of a writ petition being WPA 926 of 2024 which was disposed of by the High Court.

11. The issue with regard to personal hearing and show-cause notice were gone into in the earlier round of litigation. At least it is deemed to be so. The appellate authority was required to be considered the issues afresh after hearing the parties, by the High Court. The appellate authority did so.

12. Therefore, in our view, the issue of breach of principles of natural justice is no longer available. It appears from the order impugned in the writ petition passed by the appellate authority that, such principles were adhered to. Notice of hearing was given. The appellant chose not to appear before the appellate authority.

13. Under the provisions of the Act, 2017, the order impugned in the writ petition filed by the appellant is appealable to the Tribunal established thereunder. The Tribunal under the Act, 2017 is yet to commence functioning in the State of West Bengal.

14. In the event, the appellant filed an appeal to the Tribunal under the provisions of the Act of 2017, such appeal would be governed by the provisions of Section 112 of the Act of 2017.

15. Sub-section (8) of Section 112 of the Act of 2017 mandates a pre-deposit for an appeal to be filed before the Tribunal. In fact, it specifies that no

appeal shall be filed until conditions of pre-deposit as specified thereunder are made.

16. In the facts of the present case, learned Single Judge exercised discretion by the impugned order by directing the appellant to put in the money in terms of Section 112 of the Act of 2017.

17. Exercise of discretion, in an interim order, is not to be readily interfered with in appeal unless it is established that the interim order is perverse or passed without jurisdiction or in breach of principles of natural justice.

18. In the facts of the present case, there is an issue with regard to collection of revenue from the appellant. Therefore, the discretion exercised by the learned Judge which in our view in terms of Section 112 of the Act of 2017 cannot be said to be irregular exercise or perverse. Appellant was heard. Impugned order was passed in the writ petition of the appellant. Lack of jurisdiction of the learned Single Judge is not established.

19. The Coordinate Bench in ***Jai Venktesh Concast Private Limited and another*** *(supra)* waived the requirement of pre-deposit in filing the writ petition after "considering the peculiar facts and circumstances" of that case. The "peculiar facts and circumstances" of that case, however, does not appear from the body of the judgment.

20. ***M/s Aberdare Technologies Private Limited & Ors.*** *(supra)* directs the Central Board of Indirect Taxes and Customs to re-examine the provisions/timelines fixed for correcting the *bona fide* errors. In the facts

of that case, the Hon'ble Supreme Court was of the *prima facie* view that there was double payment.

21. Issue in the writ petition directed against the order of the appellate authority, is whether or not the appellant is liable to pay the tax assessed. Issue of double taxation, or excess payment, if at all, will be assessed on a conclusive finding that the assessment order upheld in appeal, is incorrect. Till such issue is settled finally, the question of double taxation or excess payment does not arise. At least, double taxation or excess payment does not appear on the face of the record.

22. In such circumstances, we find no ground to interfere with the order impugned.

23. **MAT 86 of 2025** and **IA No.: CAN 1 of 2025** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

24. I agree.

(Md. Shabbar Rashidi, J.)

(AD)