IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 2116 of 2025

Sankar Agarwala
Vs.
The Joint Commissioner of CGST
and Central Excise (Appeal),
Siliguri Appeal Commissionerate & Ors.

For the Petitioner	: Mr. Suman Bhowmik Mr. Hillol Saha Podder
For the CGST	: Mr. D.K. Agarwal Mr. Bishwaraj Agarwal
Heard on	: 03/11/2025
Judgment on	: 03/11/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 226 of the Constitution of India is directed against an order dated June 23, 2025 passed by the Joint Commissioner, CGST & Central Excise (Appeal), Siliguri Appeal Commissionerate.

2. By the order impugned, the appeal preferred by the petitioner was rejected on the ground that the same was presented after the condonable period of 30 days as per the CGST Act, 2017.

3. A show-cause notice under Section 73(1) of the CGST Act, 2017 was issued calling upon the petitioner to show-cause as to why the demand raised in the show-cause should not be paid by him. No reply to the show-cause notice was filed and the Proper Officer passed an order dated December 14, 2023 under Section 73 (9) of the CGST Act, 2017 determining the tax, interest and penalty.

4. Being aggrieved by such order, petitioner preferred an appeal under the provisions of Section 107 of the CGST Act, 2017. Since the appeal was presented beyond the statutory period of limitation, the same was accompanied by an application praying for condonation of delay. The appellate authority being the respondent No.1 dismissed the said appeal on the ground that the same was filed after the condonable period of 30 days as per the CGST Act, 2017.

5. The learned advocate appearing for the petitioner submits that since the show-cause notice was uploaded only under the "Additional Notices and Orders" Tab and not under the normal Tab, the petitioner was not aware of issuance of the said show-cause notice for which the petitioner could not file any reply to the said show-cause notice. The learned advocate appearing for

the petitioner further submits that immediately after coming to know of the order passed by the Proper Officer under Section 73(9) of the CGST Act, 2017, petitioner preferred an appeal under Section 107 of the CGST Act, 2017. He further submits that since, for reasons beyond the control of the petitioner, no reply to the show-cause notice was filed, an opportunity be afforded to the petitioner to contest the proceedings from the stage of filing reply to the said show-cause notice.

6. *Per contra,* Mr. Agarwal, learned advocate for the CGST authorities submits that the appellate authority lacks the power to condone the delay beyond the condonable period of 30 days and in support of such contention he placed reliance upon the provisions laid down in Section 107 (4) of the CGST Act, 2017. Mr. Agarwal further contends that the petitioner has not stated that he did not come to know of the show-cause notice from the "Additional Notices and Orders" Tab. He further submits since the petitioner was aware of uploading of the show-cause notice by the respondent authority, no further opportunity should be granted to the petitioner to file any reply to the show-cause notice.

7. Heard the learned advocates for the respective parties and perused the materials placed.

8. After going through the show-cause notice issued under Section 73(1) of the CGST Act, 2017, it is evident that an adverse

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

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.

16. The order dated December 14, 2023 passed by the Superintendent, CGST & Central Excise being the respondent No.2 and the order of the appellate authority dated June 23, 2025 are set aside subject to the condition that the petitioner shall file the reply to the show-cause notice dated September 8, 2023 within a period of three (3) weeks from the date of receipt of a server copy of this order and if such reply is filed within the time limit as mentioned hereinbefore, the respondent No.2 shall, after considering the representation/reply to the show-cause pass orders in accordance with law after giving a reasonable opportunity of hearing to the petitioner or his authorised representatives, which shall be communicated to the petitioner immediately thereafter.

17. In the event, the petitioner fails to submit the reply to the show-cause notice as indicated hereinbefore, this order shall

automatically stand recalled and the writ petition shall stand dismissed.

18. In case the reply to the show-cause notice is filed within the time limit as mentioned hereinbefore, the respondent No.2 shall be authorised to refuse any prayer for unnecessary adjournments.

19. With the above observations and directions **WPA 2116 of 2025** stands disposed of.

20. There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)

Item No.6
Court No.-2
Aritra