

HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 2132 of 2025
Sunil Kumar Podder
Versus
Union of India & Ors.

For the petitioner	:	Dr. Avinash Poddar Mr. Dhiraj Lakhotia Ms. Radhika Agarwal Ms. Meghna Joshi Ms. Khushi Kundu Ms. Madhulika Sharma
For the respondents	:	Mr. Dilip Kumar Agarwal Mr. Biswa Raj Agarwal
Heard on	:	29.10.2025
Judgement on	:	29.10.2025

Hiranmay Bhattacharyya, J.:

1. In this application under Article 226 of the Constitution of India the petitioner has challenged the order dated June 7, 2022 passed by the Additional Commissioner, CGST and Central Excise, Siliguri Appeals Commissionerate in GAPPL/ADC/GSTD/50/2021/Slg-Appeal thereby setting aside the Refund Sanction Order dated December 3, 2020 in Form GST RFD-06 passed by the Assistant Commissioner of CGST and Central Excise, Jalpaiguri Division for an amount of Rs. 27,80,898/-.

2. Petitioner claims to be engaged in the business of wholesale and distribution of plastic items and trading and export of cigarettes and tobacco products.
3. Petitioner had exported “goods” without payment of tax to Bhutan during the month of August 2000 and on such account, certain amounts of Input Tax Credit (for short “ITC”) was accumulated in the Electronic Credit Ledger of the petitioner. Petitioners filed a Refund Application in the common portal praying for refund of Accumulated ITC. The Sanctioning Authority issued a Refund Sanction Order dated 03.12.2020 and the amount so sanctioned was paid to the petitioners. Being aggrieved by the said Refund Sanction Order, the 4th respondent herein, on behalf of the Revenue, preferred an appeal before the Appellate Authority being the 2nd respondent herein praying for setting aside the Refund Sanction Order on the ground that an amount of Rs. 27,80,898.00/- has been erroneously sanctioned in excess in contravention of the provisions of law.
4. The ground on which the appeal was filed by the Revenue before the Appellate Authority was that the copies of the “Shipping Bills” are to be mandatorily uploaded along with the application for refund and the petitioner failed to upload/submit copies of the relevant manual Shipping Bills as “Proof of Export” in respect of two consignment and the sanctioning authority without verifying relevant manual Shipping Bills sanctioned an amount of refund higher than the amount actually admissible.
5. It is not in dispute that the petitioner did not upload/submit copies of the manual Shipping Bills in relation to 2(two)consignments and the Refund Sanction Order has been passed inspite of absence of the “Proof of Export” document.
6. Record reveals that before the Appellate Authority, petitioner submitted the copies of 02(two) manual Shipping Bills for the purpose of verification and consideration.
7. Petitioner prayed for accepting the said documents as an additional evidence by the appellate authority.

8. The appellate authority, by the order impugned, set aside the Refund Sanction Order dated December 3, 2020 upon observing that the manual shipping bills produced by the petitioner in course of the appeal are not admissible for consideration as the same were not presented before the original refund sanctioning authority.
9. Learned advocate appearing for the petitioner submits that since the shipping bills were generated manually, the same could not be uploaded in the concerned portal. He, however, submits that in reply to the show-cause notice issued by the concerned authority, the petitioner has produced the manual shipping bills. Learned advocate further submits that the appellate authority is vested with the power to accept the manual 'Shipping Bills' as additional evidence in view of the provisions laid down under Rule 112 of the CGST Rules, 2017.
10. Mr. Agarwal, learned advocate representing the CGST authorities raises a preliminary objection as to the maintainability of the writ petition in view of existence of an appellate remedy provided under Section 112 of the CGST Act, 2017. He further submits that in the meantime the tribunal has been constituted and filing of appeals have also been allowed through the portal set up by the authority. He further submits that the petitioner failed to make out any case that he was prevented by sufficient cause from producing the shipping bills before the Refund Sanctioning authority and any document filed before the appellate authority, cannot be mechanically accepted by the appellate authority. He submits that Rule 112 cannot be resorted to for filling up the lacunae in evidence. He submits that the appellate authority assigned cogent reasons for not accepting the documents filed by the petitioner at the appellate stage.
11. Heard the learned advocates for the parties and perused the materials placed.
12. Mr. Agarwal learned advocate appearing for the petitioner may be right in contending that the order dated June 7, 2022 is

an appellable order under the provisions of Section 112 of the CGST Act, 2017.

13. Though Mr. Agarwal submits that the Appellate Tribunal has been duly constituted in the meantime and the portal has already been set up allowing filing of appeals but Mr. Agarwal in course of hearing of this writ petition, in his usual fairness, submits that the hearing before the appellate tribunal is yet to commence.
14. It is well-settled that the High Court should be very slow to entertain and try an application under Article 226 of the Constitution of India if an alternative, efficacious remedy under the relevant statute is available.
15. A remedy provided under a relevant statute can be said to be effective only if an aggrieved party can approach such forum for redressal of his grievances and such forum is available at the relevant point of time for adjudication of the dispute(s).
16. Since adjudicatory process is yet to commence before the tribunal as it transpires from the submission of Mr. Agarwal, this Court holds that mere availability of facility for filing appeals, applications, petitions etc. cannot be construed to be an efficacious alternative remedy under the Act at present.
17. For such reason this Court is inclined to exercise discretion in favour of the petitioner and entertain this writ petition instead of relegating the petitioner to the remedy provided under Section 112 of CGST Act 2017.
18. Materials relevant for the adjudication of this writ petition are available in the record and the facts are not in dispute and only a legal issue as to the power of the appellate authority to accept documents as an additional evidence is in issue in this writ petition.
19. In view thereof, this court did not call upon the parties to exchange affidavits.

20. The question that falls for consideration in this writ petition is whether the appellate authority is vested with the power to accept documents as an additional evidence.
21. In order to decide the aforesaid issue it would be beneficial to take note of Rule 112 of the CGST Rules, 2017 which deals with production of additional evidence before the Appellate Authority or the Appellate Tribunal.
22. For better appreciation, Rule 112 of the CGST Rules is extracted hereinafter:

"RULE 112. Production of additional evidence before the Appellate Authority or the Appellate Tribunal.

- (1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely :-

- (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or*
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or*
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or*
- (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1)

unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal."

23. Subrule (1) of Rule 112 starts with the words "The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence" which clearly indicate that it is the legislative intent that the Appellate Authority should decide an appeal on the evidence led by the parties during the course of the proceedings before the adjudicating authority and shall not allow production of any evidence.

24. Sub-rule (1), however, proceeds further and carves out certain exceptional circumstance under clauses (a) to (d) in which the appellate authority is vested with the power to admit additional evidence. Clauses (a) to (d), however, deals with different situations and operate in their respective fields.

25. Sub-rule (2) mandates the appellate authority to record reasons in writing for admitting additional evidence.

26. Sub-rule (3) provides for a reasonable opportunity to the adjudicating authority or its authorised officer before taking any evidence produced under Sub-rule (1) to examine the evidence or document or to cross examine any witness produced or to produce any evidence or any witness in rebuttal.

27. Sub-rule (4) starts with a non obstante clause. Sub-rule (4) confers power upon the appellate authority to direct production of any document or the examination of any witness to enable it to dispose of the appeal even if the circumstances mentioned under Clauses (a) to (d) of Rule 112(1) are not satisfied. However, the power of the appellate Court to allow a document to be produced or a witness to be examined is limited only to those cases where the appellate authority finds it necessary to dispose of the appeal.
28. The expression “to enable it to dispose of the appeal” used in Sub-rule (4) of Rule 112 is of utmost importance.
29. Order 41 Rule 27 of the Code of Civil Procedure allows production of additional evidence in the Appellate Court. Order 41 Rule 27(b) of the Code allows production of additional evidence if the Court requires to enable it to pronounce judgment.
30. The words “to enable it to pronounce judgment” appearing in Order 41 Rule 27(b) fell for interpretation before the Hon’ble Supreme Court in **K. Venkataramiah vs. Seetharama Reddy** reported at **AIR 1963 (SC) 1526** wherein it was held that the said words have to be interpreted liberally to mean that the ability to pronounce a judgment does not mean or confine to the ability to pronounce any judgment, but the ability to pronounce a judgment satisfactory to the mind of the Court delivering or pronouncing it.
31. The said interpretation can be applied to the expression (supra) used in Rule 112 (4).
32. This Court is, therefore, of the considered view that the expression “to enable it to dispose of the appeal” used in Rule 112(4) has to be interpreted liberally. Even if the appellate authority or the appellate tribunal, as the case may be, may be able to dispose of the appeal on the basis of the materials available on records, additional evidence may be allowed if it is necessary to clear up ambiguous points, so as to dispose of the

appeal by passing a more satisfactory judgment in order to serve the interest of justice.

33. This Court, accordingly holds that Rule 112(4) confers wide powers upon the appellate authority to allow production of document(s) which is/are necessary for the purpose of disposing of the appeal satisfactorily and for rendering justice.

34. The issue is, thus, answered in the affirmative.

35. Though the appellate authority has the power to allow production of additional evidence but only such documents that are found to be relevant for the purpose of disposal of the issue in controversy can be admitted as an evidence. Where the document(s) sought to be produced in crucial, material, relevant or germane or would throw light on the question(s) involved in the appeal, the appellate authority should allow production of such document(s) as additional evidence.

36. This Court has to now consider whether the appellate authority was justified in not allowing production of documents by the petitioner as additional evidence.

37. It is not in dispute that the ground on which the revenue preferred an appeal before the appellate authority is that shipping bills relating to impugned exports were not produced. Shipping Bills are documents to prove the export of goods. Thus, the shipping bills are relevant documents for the purpose of enabling the appellate authority to dispose of the appeal effectively, and to render justice more satisfactorily.

38. This court is, therefore, of the considered view that the manual shipping bills which were produced by the petitioner before the appellate authority, are relevant documents. The appellate authority failed to exercise its discretion judiciously by not allowing production of the said documents as an additional evidence. The aforesaid issue is answered in favour of the petitioner.

39. The appellate authority failed to appreciate the object behind incorporation of Rule 112 of the CGST Rules 2017 and mechanically rejected the manual shipping bills produced by the petitioner before the appellate authority only on the ground that the same were not presented before the original refund sanctioning authority.
40. The order impugned thus suffers from infirmity, warranting interference under Article 226 of the Constitution of India.
41. For all the reasons as aforesaid, this court is inclined to set aside the order dated June 7, 2025 passed by the Additional Commissioner, CGST and Central Excise, Siliguri Appeals Commissionerate in appeal no. GAPPL/ADC/GSTD/50/2021/Slg-Appeal.
42. Record reveals that after the aforesaid order was passed, revenue issued several notices, initiated proceedings and orders were passed for the purpose of recovery of the amount of Rs. 27,80,898/- together with interest and penalty thereon.
43. Since this court has already observed that the order dated June 7, 2022 suffers from infirmity, all consequential steps taken pursuant to the said order as well as the order(s) passed subsequent thereto are also liable to be set aside.
44. For all the reasons as aforesaid, the order dated June 7, 2022 passed by the Additional Commissioner, CGST and Central Excise, Siliguri in appeal no. GAPPL/ADC/GSTD/50/2021/Slg-Appeal and all consequential steps taken thereafter including notices issued, orders passed and other steps taken for realization of the aforesaid amount are set aside and quashed. The Additional Commissioner, CGST and Central Excise, Siliguri, being the 2nd respondent is directed to hear the said appeal afresh in the light of the observations made hereinbefore and to dispose of the same in accordance with law as expeditiously as possible and preferably within a period of four weeks from the date of receipt of a server copy of this order after giving a reasonable opportunity of hearing to the

petitioner or his authorized representative and the Revenue and by passing a reasoned order which shall be communicated to the petitioner immediately thereafter.

45. WPA No. 2132 of 2025 stands allowed. There shall be, however, no order as to costs. It is made clear that this Court has not gone into the veracity or genuinity of the documents in question which issue is left open to be considered by the appellate authority.

46. Since affidavits were not called for, all allegations contained in the writ petition shall not be deemed to have been accepted.

47. Urgent Photostat certified copy of this order be supplied to the respective parties after compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)