

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

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 2192 of 2025

Shyamalmay Paul

Versus

Assistant Commissioner SGST, Siliguri Charge, Siliguri & Ors.

For the petitioner	:	Mr. Boudhayan Bhattacharyya Ms. Stuti Bansal Ms. Keya Kundu
For the respondents	:	Mr. Joyjit Choudhury, Ld. AAG Ms. Rima Sarkar
Heard on	:	04.11.2025
Judgement on	:	04.11.2025

Hiranmay Bhattacharyya, J.:

1. Affidavit of service filed in court today be kept with the record.
2. This application under Article 226 of the Constitution of India is at the instance of a registered person under the West Bengal Goods and Services Tax Act, 2017 ('WBGST Act, 2017', for short) and is directed against the appellate order dated May 16, 2025 passed by the Joint Commissioner, State Goods and Services Tax Appellate Authority, Siliguri Circle, Siliguri thereby affirming the order of the

Assistant Commissioner, State Goods and Services Tax being the adjudicating authority, Siliguri Charge, Siliguri dated August 29, 2024.

3. A show-cause notice under Section 73(1) of the WBGST Act, 2017 was issued alleging that certain discrepancies were found upon examination of the returns filed for the financial year 2019-2020 and the petitioner was asked to pay tax, interest and other amounts arising from such discrepancies or furnish an explanation for the discrepancies mentioned in the said notice within the time limit indicated in the show-cause notice. Petitioner duly submitted his reply to the said show-cause notice. The Proper Officer being the adjudicating authority passed an order dated August 29, 2024 under Section 73(9) of the WBGST Act, 2017. Though four discrepancies under serial nos. 1, 2, 3 and 4 were pointed out in the show-cause notice, but the adjudicating authority after considering the reply to the show-cause notice filed by the petitioner accepted the reply given by the petitioner insofar as discrepancies under serial nos. 1, 2 and 4 are concerned. With regard to the discrepancy under serial no. 3, the Proper Officer held that the petitioner failed to prove the genuineness of transactions beyond doubt and determined the amount of tax, interest and penalty by passing an adjudication order under Section 73(9),

4. Being aggrieved by the order dated August 29, 2024, petitioner preferred an appeal before the appellate authority under Section 107 of the WBGST Act, 2017. The appellate authority passed an order on May 16, 2025 dismissing the appeal thereby affirming the order passed by the adjudicating authority.

5. Thus the discrepancies pointed out under discrepancy nos. 1, 2 and 4 were decided in favour of the petitioner and decision on such points attained finality and the decision of the adjudicating authority and the appellate authority under discrepancy no. 3 is the subject-matter of this writ petition.

6. The issue that falls for consideration is whether the appellate authority was justified in affirming the findings of the adjudicating authority in respect of the discrepancies pointed out under serial no. 3.

7. Under discrepancy no. 3 it was alleged that the petitioner availed Input Tax Credit (ITC) on supplies made by the persons whose registration was cancelled retrospectively and that such ITC is not admissible under Section 16 of the CGST and WBGST Act, 2017.

8. Petitioner claims to have submitted various documents before the adjudicating authority and the appellate authority in support of his contention that the purchases made by the petitioner was a bona fide one and there was actual physical movement of the goods from the supplier to the petitioner. Petitioner claims to have submitted various

documents namely, tax invoices, e-way bills, transport documents, bank statements, party ledgers etc. to prove the genuineness of the transaction. Petitioner claims to have made payments through proper banking challans within the stipulated time limit. The petitioner further claims that the GST registration of the supplier was active at the time of making such inward supply and also that the goods were used in furtherance of the business.

9. In this writ petition the petitioner has also annexed the documents in support of his contention that the transaction was a bona fide one.

10. After going through the order passed by the appellate authority, this court finds that the appellate authority also noted that the petitioner has submitted various documents. Thus it is not a case of non-disclosure of documents by the petitioner before the authorities.

11. Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the appellate authority without considering the materials on record, affirmed the order of the adjudicating authority only on the ground that the invoices were issued after the effective date of cancellation of the GST registration of the supplier. In support of his contention that retrospective cancellation of GST registration of a supplier, cannot be a ground for denying the Input Tax Credit to a purchaser he placed reliance upon an order dated April 8, 2025 passed in WPA 708 of 2025 in the case of *Shyamalmay Paul –Vs-*

Assistant Commissioner of State Tax, Siliguri Charge & Ors. He submits that the appellate authority mechanically affirmed the order passed by the adjudicating authority.

12. The learned Additional Advocate General submits that in spite of repeated opportunities of hearing being provided to the petitioner, the petitioner did not appear for personal hearing before the appellate authority. He submits that the burden of proof lies upon the person claiming Input Tax Credit to substantiate by production of material evidence that the transaction was a bona fide one and there was actual physical movement of goods from the supplier's end to the purchaser. He further submits that the appellate authority after considering the materials on record passed a detailed order and this court should not interfere with such order in exercise of the powers of judicial review.

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

14. After going through the order passed by the appellate authority this court finds that the appellate authority has recorded that the petitioner has submitted various documents namely, tax invoices, e-way bills, transport documents, bank documents, party ledgers etc.

15. After noting the contentions raised by the petitioner, the appellate authority took note of the finding of the adjudicating authority and without assigning any reason as to why the documents produced by the petitioner cannot be accepted as a proof that the

transaction was a bona fide and genuine one and to support actual physical movement of the goods from the supplier to the purchaser, affirmed the order of the adjudicating authority only on the ground that the invoices issued by the supplier from whom the petitioner has made purchases and has claimed ITC, were found to have been issued after the date of cancellation of registration certificate of the above-detailed suppliers.

16. After going through the show-cause notice this court finds that it was alleged that the petitioner had availed ITC under CGST and WBGST Acts on suppliers made by person whose registration was cancelled retrospectively. Though the effective date of cancellation of the GST registration of the supplier in question namely Arijit Dey is prior to the date of issuance of the invoices but it is not in dispute that the GST registration of the said supplier was cancelled after issuance of the invoice date but with a retrospective effect from October 12, 2018.

17. It is not the case of the Revenue that as on the date when the supplies are claimed to have been made by Arijit Dey to the petitioner, the registration of the supplier was not valid.

18. It is now well-settled that retrospective cancellation of registration of the supplier, cannot be the sole ground for denying the Input Tax Credit to the purchaser. Apart from holding that the invoice dates were after the effective date of cancellation of the registration

certificate of the supplier in question, no other ground has been mentioned by the appellate authority as a ground for denial of Input Tax Credit.

19. On a query of the court as to why the petitioner did not attend for personal hearing, Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that several proceedings against the petitioner were pending at the relevant point of time and the date of hearing fixed by the appellate authority insofar as the instant case is concerned, somehow escaped the notice of the petitioner for which the petitioner could not attend the personal hearing before the appellate authority. Even though the appellant was not present at the hearing but the documents in support of the appellant's contention were available on record. Therefore, it was incumbent upon the appellate authority to consider such documents available on record and return a finding on such documents as to why same is not acceptable. Even if the contention of the Revenue is accepted that the petitioner failed to attend the personal hearing in spite of being afforded several opportunities in that regard, to the mind of this court, the appellate authority failed to perform its statutory duty by not returning any findings on the relevancy or otherwise of the materials available on record. Whether the decisions which were relied upon by the adjudicating authority while passing the order of adjudication are applicable to the facts of the case on hand were also not considered.

20. In *Shyamalmay Paul (supra)* on more or less identical facts, this court had set aside the order of the authorities on the ground no finding was recorded on the document produced with regard to movement of goods and also whether the requirement of availing the ITC as prescribed under the statute was complied with or not. The said decision shall squarely apply to the facts of this case.

21. For all the reasons as aforesaid, this court holds that the order passed by the appellate authority is a non-speaking order and only for such reason the same is liable to be set aside.

22. Accordingly, the order of the appellate authority dated May 16, 2025 insofar as it relates to discrepancy under serial no. 3 is concerned, is set aside.

23. The appellate authority is directed to fix a date of hearing insofar as the discrepancy no. 3 and to serve an advance notice to the petitioner.

24. The appellate authority is directed to pass a reasoned order insofar as the discrepancy no. 3 only is concerned after giving an opportunity of hearing to the petitioner or his authorized representative and to communicate the same immediately thereafter.

25. With the above observations and directions this writ petition stands disposed of.

26. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)