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Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3561 of 2026

Munna Kumar Sharma
Versus
The State of West Bengal & Ors.

Ms. Bulbuli Basu
... For the petitioner.

Mr. Saptak Sanyal
... For the State.

1. The present writ petition has been filed, inter alia, challenging the recovery of the demand made in Form GST APL 04 dated 4th December, 2025 passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act'), arising out of an order dated 29th August, 2024 passed under Section 73 of the said Act, for the tax period April, 2019 to March, 2020.

2. Learned advocate for the petitioner would submit that the statute recognizes a right to the petitioner to prefer an appeal from the appellate order passed under Section 112 of the said Act before the Appellate Tribunal. In the instant case, though the Appellate Tribunal has been constituted, the same is yet to become functional. By placing before this Court the provisions of Section 112 and Section 78 of the said Act, she would submit that the respondents could not have recovered the demand raised by the respondents in Form GST APL 04 dated 4th December, 2025 prior to expiry of three months and in the instant case, prior to 30th June, 2026, having regard

to the notification dated 17th September, 2025. According to her, the recovery made by the respondents is contrary to the statute, the same cannot be sustained and should be set aside and the amount already recovered should be re-credited to the petitioner's bank account and the credit/cash ledger.

3. Mr. Sanyal, learned advocate appears for the respondents. By placing before this Court Section 78 of the said Act he submits that the respondents have the power and authority to make the recovery even prior to expiry of the three month period as such there is no irregularity in the order.

4. Having heard the learned advocates appearing for the respective parties and noting in the instant case the determination made by the respondents under Section 73 of the said Act has been confirmed by an order passed in APL 04 dated 4th December, 2025, ordinarily, no recovery could have been made prior to the expiry of three months from such demand. In the instant case recovery has been made from the petitioner's bank account and from its electronic ledger within the aforesaid period of three months without the respondents providing reasons in writing why such recovery has been made. The above recovery appears to be an extra-judicial recovery and contrary to the statute. I am of the view that having regard to the provisions contained in Section 78 of the said Act, the recovery made by the respondents from the petitioner's bank account maintained with the State Bank

of India cannot be sustained and the same is accordingly set aside.

5. The respondents are directed to refund the entire amount recovered from the petitioner's bank account maintained with the State Bank of India vide Account No.36512008231 and the amount which has been debited from the petitioner's cash/credit ledger should also be forthwith credited back to the petitioner's electronic ledger within a period of three working days from the date of receipt of this order. Further, taking into consideration the notification S.O.4220(E)[F.No.A-50/7/2025-GSTAT-DoR] dated 17th September, 2025, since time to prefer the appeal before the Appellate Tribunal has been extended, ordinarily no recovery should be made till the time to file the appeal expires contrary to Section 78 of the said Act.

6. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)