

18.05.2026
Item No.38
Ct. No. 10
BR

WPA 4699 of 2026
Barun Kumar Biswas

-vs-

Union of India and anr.

Ms. Micky Chowdhury,

Mr. B. N. Pal

..... for the petitioner

Mr. Anjan Chakraborty,

Ms. Avantika Chakraborty

... for the respondent no. 1

Mr. K. K. Maity,

Mr. Kaushik Dey

... for the CGST Authority

- 1.** The petitioner in the instant case challenges , inter alia, the legality and validity of the order dated 3.12.2025 passed by the respondent no.2
- 2.** The main grievance of the petitioner is with regard to the denial of eligible Input Tax Credit on valid invoices issued by the supplier M/s. Adrian Infra Services Private Ltd. during the period from April 2021 to June 2021 as per Section 16 read with Section 31 of Central Goods Services Tax 2017 and Rule 36 of Central Goods Service Tax Rules, 2017.
- 3.** The petitioner submits that the respondent authorities have cancelled the supplier's registration retrospectively from 28.11.2019 thereby, invaliding the invoices issued during the period from April 2021 to July 2021 as per Section 16

read with Section 31 and Rule 36 and instruction No. 02/2022-GST dated 22.03.2022 (para 7 of Annexure B).

- 4.** It is further submitted by the petitioner that the adjudicating authority has held that the petitioner has availed Input Tax Credit irregularly amounting to Rs. 1,24,16,354 (CGST Rs. 62,08,177) and SGST-Rs. 62,08, 177/-) under Section 73 (9) of the CGST Act, 2017 read with the corresponding provisions of the WBGST Act, 2017.
- 5.** Thereafter on 10th September, 2025 a show cause notice has been issued under Section 73 of the Central Goods and Services Act, 2017, (hereinafter referred to as the said Act) for the financial year 2021-2022 by the respondent authority. The petitioner duly submitted its reply to the said show cause notice and contended that it had availed input tax credit (ITC) upon compliance with all the conditions stipulated under Section 16(2) of the said Act.
- 6.** Thereafter the petitioner has challenged the retrospective cancellation of the supplier registration with effect from 28.11.2019 and the consequential

invalidation of all the invoices issued during the period from April 2021 to July 2021 as being arbitrary, illegal and contrary to the provisions of the Section 16(2) of the said Act and Rules and instruction No. 2/2022-GST dated 22.03.2022 issued by the Central Board of Indirect Taxes and Customs.

- 7.** Learned counsel appearing for the respondent authorities vehemently opposes the same and draws the attention of this Court to paragraph 13 and 14 of the writ petition to demonstrate that the petitioner has illegally availed the ITC, on all invoices issued by the supplier whose registration has already been cancelled suo motu with effect from 28.11.2019.
- 8.** In this context, the petitioner submits by relying upon the paragraph 18 of the writ petition, that the registration has been cancelled by the respondent authorities retrospectively with effect from 28.11.2019 and such retrospective cancellation cannot in-validate invoices issued during the period when the supplier was registered and active on the GST portal.

9. The petitioner places reliance upon a judgement of a Coordinate Bench of this Court with regard to the issue of remaining cases to respondent authorities for considering afresh the issue of the entitlement to the benefit of input tax credit in question, by considering the documents which the petitioner intends to rely upon in support of the claim of genuineness of the transactions and the respondents has been directed to consider whether the payment on purchases in question along with GST were actually paid to the supplier and also to consider whether the purchases were made before or after the cancellation of the registration of the suppliers in compliance of the statutory obligation regarding verification of the identity of the suppliers. A further reliance has also been placed upon a judgment of the Coordinate Bench of this Court wherein it has been observed in the case of *Shyamal Mal Paul Vs Asstt. Commissioner* reported in (2025) 180 Taxmann.com 415 (Calcutta) which is reproduced below:

“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.

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

10. The petitioner further relies upon another Division Bench’s judgement of this Court in the case of Jyoti Tar Products Private Ltd. Vs. Deputy Commissioner, State Tax, Shibpur Charge reported in 2025 (95) GSTL 392 Calcutta by relying upon paragraphs 16 and 22 which is reproduced below:

“16. However, this appears to be not the allegation in the pre-show cause notice as the only allegation was that the three suppliers registration has been cancelled.

22. The exercise appears to be have not been done by the adjudicating authority and , therefore, we are of the view that the matter has to be readjudicated by taking note of all the factual issues bearing in mind the legal principles laid down in various decisions. Though the reply to the pre-show cause notice dated 6.10.2023 gives the necessary details and the documents which have been annexed , we are of the view that the appellants should submit a fresh reply dealing with all issues with liberty to place the decisions of the various courts on which they seek to place reliance.”

11. After hearing the rival contention of the parties and upon perusal of the available records I find that the petitioner has been able to make out a prima facie

case. Interference is warranted at this stage.

12. I direct the respondent to revisit the issue and consider the same in light of the two Division Bench's judgements within a period of 8 weeks by passing a reasoned order in accordance with law. Such decision shall be communicated within a week thereafter.

13. With the above observation and directions, the Writ Petition is allowed and disposed of, by quashing and setting aside the Order dated 03.12.2025.

14. Since the affidavit has not been called for, the allegations contained in the writ petition are deemed to have been denied and not admitted.

(Smita Das De, J.)