IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Om Narayan Rai

WPA4901 of 2025

Parag Vinimay Pvt. Ltd.
-Vs-
Assitant Commissioner, State Tax, Bureau of Investigation, South Bengal (Head Quarters) &Ors.

For the Petitioner : Mr.Anil Kumar Dugar, Adv.

For the State : Mr.TanmoyChakraborty,Adv.
Ms.Sumita Shaw, Adv.
Mr.SaptakSanyal, Adv.

Hearing Concluded on :03.02.2026

Judgment on :03.02.2026

<u>Om Narayan Rai, J.:-</u>

1. This writ petition is directed against an order dated October, 23/2024 passed by the appellate authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017(hereinafter the said Act 2017), whereby the petitioner's appeal against an order dated September 22, 2022 passed under Section 73 of the said Act of 2017 has been rejected.

2. Briefly stated, the facts of the case are that a notice dated December 28, 2020 had been issued to the petitioner calling upon the petitioner to show cause as to why the petitioner will not be liable to pay tax on account of excess availment of Input Tax Credit (ITC) on the ground that the petitioner's supplier had not filed its return in Form GSTR-3B for the period August, 2019 to October, 2019.

3. The petitioner replied to the notice to show cause. During the pendency of the adjudication proceedings, the petitioner's supplier uploaded the returns in Form GSTR -3B for the months of August 2019 and September, 2019. However, the return for the month of October, 2019 was not uploaded even then. The adjudicating authority gave credit to the petitioner for the months of August, 2019 and September, 2019 but confirmed the demand in so far as the month of October 2019 is concerned.

4. Assailing such order, the petitioner approached the appellate authority under Section 107 of the said Act of 2017.

5. The said appeal has been dismissed by the order impugned by questioning the genuineness of the petitioner's transactions and by holding that the petitioner has failed to produce any evidence "testifying the fact that he has actually received the goods". It is noteworthy that during the pendency of the appeal before the appellate authority, the petitioner's supplier uploaded its return in Form GSTR-3B for the month of October, 2019 also, but the appellate authority still rejected the petitioner's appeal citing grounds different than those indicated in the notice to show cause.

6. Feeling aggrieved by such order the petitioner has approached this court by way of the present writ petition.

7. Heard the learned Advocates appearing for the respective parties and considered the material on record.

8. It is noticed that the only point canvassed in the notice to show cause that formed the foundation of the proceeding under Section 73(1) of the said Act of 2017 initiated against the petitioner was that the petitioner's supplier had not filed its return in Form GSTR-3B for the months of August, 2019 to October, 2019.

9. Since, that was the only issue, therefore upon the returns for the months of August, 2019 and September, 2019 being filed by the petitioner's supplier, the proper officer/adjudicating authority dropped the demands in respect of the aforesaid months and confirmed the demand in sofar as the October, 2019 is concerned, (as no return had been filed in respect of the said month even during the pendency of the adjudication proceedings).

10. Upon the return being filed even in respect of October, 2019, during the pendency of the appellate authority proceeding, there was no reason for the appellate authority to not adopt the same standard that had been adopted by the proper officer/adjudicating authority. The appellate authority has tried to upset the petitioner's case on certain grounds which were never raised against the petitioner in the notice to show cause. It is settled that any adjudicating authority whether original or appellate cannot travel beyond the confines of the notice to show cause and an order passed on grounds extraneous to the notice to show cause would be become vulnerable on that score alone.

11. Such principle has been given statutory recognition both in Section 75(4) as well as the second proviso to Section 107(11) of the said Act of 2017.

12. Such being the legal position, if the appellate authority intended to confirm the demand against the petitioner on a ground other than the one mentioned in the notice to show cause, it was incumbent on the appellate authority to allow the petitioner a chance to rebut the same. Not having done so, the appellate authority has acted arbitrarily.

13. In such view of the matter, the appellate order dated 23rd October 2024, impugned herein is set aside. The matter is remanded to the file of the appellate authority for a fresh decision upon affording an opportunity of hearing to the petitioner, on all points that the appellate authority may have contemplated against the petitioner in accordance with law.

14. It is clarified, that the petitioner shall be entitled to file additional submissions and/or reply to the queries that may be put to the petitioner by the appellate authority, which shall be taken into consideration by the appellate authority in accordance with law while passing its final order.

15. WPA 4901 of 2025 stands disposed of with the above observations. No costs.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)