12.11.2026
04 Ct. No.10
AGM

WPA 4990 of 2026

Kamdhenu Udyog Private Limited & anr.
vs.
The Assistant Commissioner of Revenue, Office of the Charge Officer, Commercial Taxes, Bhabanipur Charge & Ors.

Mr. Ankit Kanodia.
Ms. Megha Agarwal.
Mr. S. Ojha.
Ms. Tulika Roy.

....for the petitioners

Ms. Manasi Mukherjee.
Mr. Bijitesh Mukherjee.

....for the State-respondents

1. Affidavit of service filed in Court today be kept with the record.

2. The petitioners in the present writ petition pray, inter alia, for quashing of the Demand Order along with the summary in Form DRC 07 for the financial year 2018-19 dated 19.04.2024 passed under Section 73 of the Central Goods and Services Tax Act, 2017(hereinafter referred to as the said 'CGST Act') and West Bengal Goods and Services Tax Act(hereinafter referred to as the said 'WBGST Act') passed by the respondent no. 1 along with the order of dismissal of the appeal filed by the petitioners under Section 107 of the said GST Act, 2017 dated 1.1.2025 passed by the respondent no. 2 which was subsequently dismissed on 20.2.2026 on the ground of limitation of delayed filing of appeal beyond 3+1 month's time for filing an appeal against the impugned

Demand Order which was not served on the petitioners but was merely uploaded on the GST portal under the tab 'Additional Notice and Orders'.

3. Learned counsel appearing for the petitioner submits that the Tax Consultant who looked after the taxation affairs of the petitioners, felt seriously ill and due to multiple simultaneous proceedings, the petitioners lost sight of the uploaded documents on the GST portal and were unable to file an appeal before the authority within the prescribed time mentioned in the statute.

4. The petitioners submits that, against the order of adjudication dated 19.4.2024, an appeal was supposed to be filed within 19.8.2024 but, due to unforeseen circumstances, the petitioners were unable to file the same on the GST portal within the statutory period.

5. The petitioners came to learn about the order of adjudication only at the time of the due date of filing of the annual return in GSTR Form-9.

6. Thereafter, the petitioners, on 1.1.2025, filed an appeal before the respondent no. 2 upon payment of 10% of the tax in dispute.

7. In this context, the petitioners have relied upon paragraph nos. 30, 31 and 58 in the matter of **Ram Kumar Sinhal –versus- State of West Bengal** reported in **(2025) 33 Centax 175 (Cal.)** which are reproduced below:

> *"30. There are two sub-issues involved under the question as to whether the delay occasioned in preferring the appeal before the Appellate Authority*

> *could be condoned. The first component is whether the Appellate Authority and/or the writ court had power to so condone and secondly, whether, on facts of the case, the same ought to have been condoned.*
> *31. In. S. K. Chakraborty (supra) the Co-ordinate Bench of this Court categorically observed that the timelines stipulated in Section 107(4) of the WBGST Act are not mandatory and the provisions of the Limitation Act are applicable.*
> *58. It is well-settled that the strict rule of interpretation is applied in respect of taxing and penal statutes. Since the relevant provisions of the WBGST Act are penal in nature and the WBGST Act itself is a taxing statute, the strict rule of interpretation has to be applied in construing its provisions. Going by the said rule, where some action is provided for in the statute to be done in a particular mode and manner, it either has to be done exactly in accordance therewith or not at all."*

8. The petitioners also relied upon paragraph nos. 14, 15 and 17 in the case of **GSPR Developers Private Limited –vs.- State of West Bengal & Ors** in WPA 263 of 2026 on 11.06.2026 which are reproduced below:

> *"14. After hearing the rival contention of the parties and upon perusing the materials available on records this Court is primate facie satisfied that the petitioner has demonstrated sufficient cause for further delay. The Order dated 27.02.2025 has been communicated to the Chartered Accountant who failed to inform the petitioner. The petitioner came to learn of the proceeding only on 29th May, 2025 upon initiation of recovery.*
> ***15.** Admittedly the petitioner has paid the mandatory pre deposit of Rs. 14,58, 320/- and filed the appeal on 01.09.2025. The amount of the Rs. 74,00,000/- has already been recovered from the petitioner's bank account through garnishee proceeding.*
> *17. To balance the equities and to secure the ends of justice, this court is of the view that the interference is warranted at this stage. The delay in preferring the appeal deserves to be condoned. The initiation of the recovery proceedings despite the debit of the mandatory pre deposit, is contrary to the scheme of the Act once an appeal is entertained."*

9. Learned counsel appearing for the State respondents vehemently opposes the contention of the petitioners and draws the attention of this Court to page 91 of the

present writ petition and submits that the petitioners were very much aware of the proceedings, as it is evident that the petitioners, being the auditee, have not paid any amount in respect of the observations made in the audit report. Secondly, the petitioners were given ample opportunity of personal hearing with regard to the issue involved herein. Personal hearing notices were issued on 2.1.2024 and 18.4.2024 respectively.

10. Despite such opportunity granted, the petitioners have chosen not to appear before the authority concerned, as a result of which the appellate authority was compelled to pass the order of adjudication.

11. Despite repeated reminders made to the petitioner by directing to file the reply to the show cause notice dated 26.12.2023 within 25.1.2024, the petitioner remained silent. A further reminder was also given on 13.4.2024 to file a reply by 18.4.2024, the same was still not filed.

12. After hearing the rival contentions of the parties and upon perusal of the materials available on record, this Court is of the view that the petitioners have been able to make out a prima facie case warranting interference at this stage. Upon being satisfied with the reasons for non compliance of the request made by the respondent authorities to the petitioner for filing a reply to the impugned show cause notice, and the delay caused in not filing the appeal before the appellate authority within

the prescribed statutory period, this court observes that the order dated 20.2.2024 is arbitrary, illegal and inviolation of the principles of natural justice and the order is unsustainable in the eye of law and is thus hereby quashed and set aside.

13. Since the petitioners have paid 10% of the tax in dispute, for balancing the equities and for the ends of justice, this Court directs the respondent no. 2 to revisit the issue by passing a reasoned and a speaking order in accordance with law and to dispose of the said appeal within a period six weeks from the date of communication of this order upon affording opportunity of personal hearing to the petitioners. Such decision shall be communicated within a week thereafter.

14. With the above observation and directions this writ petition stands disposed of in the light of **Ram Kumar Sinhal –versus- State of West Bengal (**supra) and **GSPR Developers Private Limited –vs.- State of West Bengal & Ors** (supra) without going into the merits of this case.

15. Since no affidavit in opposition has been called for, the allegations contained in the writ petition are deemed to have been denied and not admitted.

16. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Smita Das De, J.)