Item No.
SL.970
SD
24.2.26

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side.

WPA 8980 of 2025

Pioneer Co-operative Car Parking Servicing and Constructions Society Ltd.
Vs.
Assistant Commissioner of State Tax, MR and NS Road Charge.

Mr. Vinay Kumar Shraff
Mr. D. K. Agarwar
Ms. R. Prasad
Mr. P. Sharma .... For the Petitioner.

Mr. Saptak Sanyal .... For the State.

1. This writ petition has been filed against an order dated 21st January 2025 passed by the proper officer under Section 73 of the WBGST Act, 2017/CGST Act, 2017 thereby holding the petitioner liable to pay tax on parking services.
2. It is the petitioner's case that the petitioner has been rendering parking services to the Kolkata Municipal Corporation and collecting parking charges on its behalf.
3. Mr. Shraff, learned Advocate appearing for the petitioner submits that the petitioner has been rendering parking services and collecting parking charges upon being authorized by the Kolkata Municipal Corporation as the petitioner does not have any right of

ownership over the parking spaces. It is submitted that since the Kolkata Municipal Corporation is performing functions in terms of the provisions of Article 243W read with the Twelfth Schedule of the Constitution of India, therefore, the petitioner who has been realising parking charges upon being duly authorized by the Kolkata Municipal Corporation cannot be held liable to pay any amount as GST on such parking services.

4. Mr. Shraff invites the attention of this court to a letter dated March 7, 2019 issued by the Manager (Car Parking)/ Parking Department of Kolkata Municipal Corporation to the petitioner and submits that by the said letter the said authority of Kolkata Municipal Corporation had clarified that in terms of a notification dated June 28, 2017 services by government, a local authority or Governmental Authority or services in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India are exempted from GST.

5. It is next submitted that if in such a situation, the petitioner is saddled with GST, the petitioner would have to pay something which

the petitioner is not liable to pay.

6. It is further submitted that in terms of Section 7 of the said Act, 2017 parking services does not fall within the definition of supply of service and is therefore for not taxable.

7. Mr. Shraff, further submits that the petitioner has in its possession documents to substantiate the petitioner's contention that the petitioner is rendering parking services on behalf of the Kolkata Municipal Corporation. He produces a copy of a "Possession Certificate of Realization of Parking Fees" issued by the Chief Manager (Parking) Kolkata Municipal Corporation and submits by relying thereon that the petitioner has only been instructed to collect Rs.10/-per car parking and Rs.20/- for lorry parking without any GST component. A copy of the said certificate handed up to court is taken on record. A copy of the said certificate is also handed up to the learned Advocate for the respondent.

8. It is submitted that in absence of any instruction from the Kolkata Municipal Corporation, the petitioner has not been collecting any amount on account of GST from the recipients of parking services and as such

the petitioner cannot be asked to pay the same. Mr. Shraff further submits that the petitioner is a Co-operative Society of some 250 members and that if the petitioner is directed to pay GST, without the petitioner collecting the same from the end-users of the parking services, the petitioner will be unjustly saddled with financial burden.

9. He fairly submits that all the documents which ought to have been produced before the adjudicating authority were not there before the adjudicating authority and if an opportunity is given the same can be produced in support of the petitioner's contention.

10. Mr. Sanyal, learned Advocate appearing for the respondent GST Authorities submits that the order is appealable in nature and the petitioner should approach the appellate authority under Section 107 of the said Act of 2017 if the petitioner is aggrieved thereby. It is further submitted that the petitioner did not produce anything before the adjudicating authority in support of the petitioner's contention that the petitioner is rendering services on behalf of the Kolkata Municipal Corporation.

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

12. Although from the letter dated March, 7, 2019 annexed as Annexure P/9 at page 104 of the writ petition an inference can be drawn that the same had been written in relation to some permission for collecting GST charges over the scheduled rate of parking fees, the said document by itself may not be in the nature of a clinching evidence for the purpose of arriving at a firm conclusion that the petitioner had been rendering parking services to or on behalf of the Kolkata Municipal Corporation. A "Possession Certificate for Realization of Parking Fees" that was sought to be produced in court today also admittedly did not form part of the records before the proper officer.

13. In such view of the matter, the order impugned dated January 24 of 2025 cannot be faulted. However, since the order impugned has rejected the petitioner's contention on the ground that the petitioner has failed to *"furnish any document (Agreement) with Kolkata Municipal Corporation in support of"* its

claim that it had *"collected parking charges on behalf of Kolkata Municipal Corporation"* and since the petitioner has demonstrated a semblance of a case that the petitioner is acting on behalf of the Kolkata Municipal Corporation this Court is of the view that the petitioner should be granted an opportunity to approach the proper officer and demonstrate, on the basis of the documents which the petitioner has in its possession, that the petitioner is not liable to pay GST on parking services.

14. Accordingly, the petitioner is granted liberty to approach the proper officer by way of an appropriate representation with all documents in support of the petitioner's claim that the petitioner is rendering parking services on behalf of the Kolkata Municipal Corporation within a period of two weeks from date.

15. If such representation is made within the period indicated herein, the adjudicating authority shall grant a post decisional hearing to the petitioner and pass appropriate orders within a period of two weeks thereafter.

16. It is clarified that the adjudicating

Authority shall be free to stick to the same conclusion that it has reached earlier if it finds that the documents that have been furnished by the petitioner and the submissions made by the petitioner are not acceptable in law or in fact.

17. In case the adjudicating authority finds that the petitioner is not liable to pay GST in the light of the law governing the parties and the documents furnished by the petitioner, the proper officer shall not give effect to the order dated January 21, 2025 which has been impugned in the writ petition.

18. The order impugned dated January 21, 2025 shall remain in abeyance and shall not be given effect to for a period of four weeks from date, within which time, the proper officer shall take a decision on the petitioner's representation filed in terms of this order.

19. If the adjudicating authority is not convinced with the petitioner's submission it will record its findings on such aspect and the same would be treated as supplementary/additional reasons in support of the order dated January 21, 2025.

20. The course thereafter shall depend on

the ultimate decision taken by the adjudicating authority in terms of this order. The petitioner shall also be entitled to take steps against the impugned order together with its supplement in accordance with law, if the petitioner is aggrieved thereby.

Re: **CAN 1 of 2026**

21. CAN 1 of 2026 has been filed bringing on record an e-mail dated January 30, 2026 issued to the petitioner by the petitioner's Banker indicating that garnishee proceedings under Section 79 of the said Act of 2017 have been initiated against the petitioner on the strength of the order dated January 21, 2025 impugned in the present writ petition.

22. Since the order dated January 21, 2025 has been directed to be kept in abeyance for a period of four weeks from date, the garnishee proceedings shall also remain stayed for a period of eight weeks from date.

23. However, it is clarified that if the petitioner does not file any representation in terms of this order within a period of two weeks as indicated hereinabove the order impugned and the garnishee proceeding shall continue to remain in force and this order

shall not enure to the benefit of the petitioner.

24. With the aforesaid observations both WPA 8980 of 2025 and CAN 1 of 2026 stand disposed of. No costs.

(Om Narayan Rai, J.)