IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **11.02.26**
D/L.
Item No.08
(Samar)

WPA 12494 2025

Vikram Bhuwalka.
Vs
Assistant Commissioner of State Tax, Ballygunge Charge

Mr. Vinay Kumar Shraff,
Mr. Dev Kumar Agarwal,
Ms. Ritika Prasad,
Mr. Prithwijit Sharma
...for the petitioner.

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal,
... for the State.

1. This writ petition is directed against an adjudication order dated February 27, 2025 passed under Section 73 of the WBGST Act, 2017/CGST Act, 2017 (hereafter "the said Act of 2017") whereby the petitioner has been held liable to pay tax on account of *"ITC uploaded by suppliers whose registration has been cancelled retrospectively"* and *"ITC found reversible in respective of credit notes received"*.

2. The petitioner was initially issued a notice whereby the petitioner was called upon to show cause as to why shall the petitioner not be held liable to pay tax on three grounds i.e (i) *"ITC uploaded by suppliers whose registration has been cancelled retrospectively"*; (ii) *"ITC found reversible in respective*

of credit notes received” and *(iii) “ITC found reversible in proportion to exempt supply, if any”.*

3. The petitioner replied to the notice to show cause. At the time of passing the adjudication order, the third ground i.e. *“ITC found reversible in proportion to exempt supply, if any”*, was dropped by the Proper Officer. However, the petitioner was held liable to pay tax on the other two grounds.

4. Assailing the said order, the writ petitioner is before this court by way of the present writ petitioner.

5. Mr. Shraff, learned advocate appearing for the petitioner submits that the order impugned has been passed in total derogation of the principles of natural justice.

6. It is submitted that the reply given by the petitioner to the notice to show cause has not been appropriately considered and the Proper Officer has, in effect, gone beyond the notice to show cause in holding the petitioner liable to pay tax.

7. It has been further asserted by Mr. Shraff that the Proper Officer has, while passing the order impugned, relied on statements / declarations of vehicle owners, who were summoned by the Proper Officer, without affording to the petitioner any opportunity of even perusing the said statements leave alone cross-examining the vehicle owner.

8. Mr. Sanyal, learned advocate appearing for the respondent state GST Authorities submits that reply to the notice to show cause furnished by the petitioner has been appropriately considered by the Proper Officer and the order impugned cannot be faulted on that score at all. It is further submitted that the petitioner has an efficacious alternative remedy by way of appeal before the Appellate Authority under Section 107 of the said Act of 2017 and, as such, this court should not interfere with the order impugned under Article 226 of the Constitution of India.

9. It is next submitted that the petitioner has not been able to demonstrate movement of goods since the petitioner has not provided movement details such as consignment note, road challan or transportation payment details with reflection of bank transaction, weighment slip, goods received note against transporter copy, the details of outward supply of the purchased goods as asked for in the show cause notice have not been provided.

10. Mr. Shraff, learned advocate appearing for the petitioner submits that the petitioner has while furnishing its reply to the notice to show cause provided all the documents that the petitioner had in its possession namely, transporter records containing the details of transporters and vehicle

information used for delivery goods to the buyers together with delivery acknowledgments comprising signed and dated receipts confirming delivery of goods details at the buyers premises. It is further submitted that the petitioner had also submitted E-way bills. It is further submitted by Mr. Shraff that along with the aforesaid documents the petitioner has also furnished copies of return (in Form GSTR-3B) of the suppliers and payment details reflecting payments made though banking channel. That apart, it is submitted that, various documents have also been submitted to establish the existence of the suppliers.

11. Mr. Shraff has relied on a judgment of a Co-ordinate Bench of this Court in the case of **Shiva Chemicals Vs. Assistant Commissioner of Revenue, State Tax, Jorasanko and Jorabagan Charge reported in (2024) 165 taxmann.com 13 (Calcutta)** to buttress his contention that the petitioner has discharged its burden.

12. Heard learned advocate appearing for the respective parties and considered the material on record.

13. It appears that one of the strong planks of the order passed by the adjudicating authorities is that *"fate of the purchased goods"* lies in the territory of the unknown. The Proper Officer has doubted the

movement of the goods on the basis of the absence of certain documents. The Proper Officer has sought to translate its doubt into a firm inclusion on the basis of *“declarations given by vehicle owners”* who appeared *“in compliance with the summons”* issued by the Proper Officer.

14. The order impugned does not show how the documents that have been furnished by the petitioner have been considered and why the said documents are not sufficient for the petitioner to discharge his burden as regards movement of goods. The Proper Officer has not spent even a line of reasoning on this aspect.

15. It is noticed that the petitioner has produced a tome of documents before the Proper Officer with his reply to the notice to show cause (mentioned at pages 259 and 262 of the writ petition) including invoices for the products transported and delivered, records of vehicle registration and ownership, logbooks of internal documentation tracking transportation schedules and product deliveries, GST complaint transaction rewards, details of transporters and vehicle information used for delivering goods to buyer, delivery acknowledgements being signed, sealed and dated receipts confirming delivery of goods at buyer’s premises as well as E-way bills.

16. Since the question of movement of goods was one of the significant questions that had been posed by the Proper Officer which had been replied with documents to support the reply, it was incumbent on the part of the Proper Officer to bestow some modicum of reasoning as to why the documents as submitted by the petitioner were not reliable or not acceptable or not sufficient to discharge the burden. None of these conclusions is evident from the order impugned. The Co-ordinate bench in the case of **Shiva Chemicals (supra)** clearly applies to the facts of this case. The order impugned is clearly infirm not only due to lack of reasons but also due to non-consideration of relevant evidence leading to perversity.

17. Most importantly, the Proper Officer has firmed up the conclusion on the basis of certain statements made by vehicles owners, who were not confronted with the petitioner and their statements have not been provided to the petitioner. It is settled law that if any material is relied on for the purpose of drawing adverse conclusion against a person by a quasi judicial authority such person must be given an opportunity to rebut the same. Not having done so, the Proper Officer has violated the principles of natural justice which makes the order vulnerable

and prone to interference in judicial review under Article 226 of the Constitution of India.

18. As regards the point of entertainability due to availability of alternative remedy of appeal, it is now well settled that statutory appeal is not an absolute bar in entertaining a writ petition if the case made out in the writ petition falls within any of the well known exceptions justifying invocation of writ remedy. Violation of principles of natural justice is one of them. In the present case, it would be evident from the discussion made above that there has been patent violation of principles of natural justice.

19. In such view of the matter, the order impugned dated February 27, 2025 is set aside and the matter is remanded to the file of the Proper Officer for a fresh adjudication upon affording an opportunity of hearing to the petitioner.

20. It is clarified that if the Proper Officer seeks to rely on the statements of the vehicle owners or any other person, the Proper Officer must afford an opportunity of cross examination of all such persons to the petitioner and should also supply the statements of such persons to the petitioner prior to the same being relied on by the Proper Officer. It is made clear that the petitioner shall not be entitled to raise objection to the adjudication proceeding being continued and concluded in terms of this order by

the Proper Officer on the ground of the same being barred by limitation.

21. The Proper Officer shall conclude the adjudication proceedings, in accordance with law, as expeditiously as possible and preferably within a period of eight weeks from the date of communication of this order.

22. WPA 12494 of 2025 stands disposed of. No costs.

(Om Narayan Rai , J.)