

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
THE HON'BLE JUSTICE OM NARAYAN RAI**

WPA 12666 of 2025

M/s. Vedant Road Carriers Pvt. Ltd. &Anr.

Vs.

**The Assistant Commissioner of West Bengal State Tax,
Jorasanko & Jorabagan Charge & Ors.**

For the Writ Petitioners :Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
Mr. Piyush Khaitan, Adv.

For the Respondents :Mr. N. Chatterjee,
Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.

Hearing Concluded on :19.01.2026

Judgment on :19.01.2026

Om Narayan Rai, J.:

1. This writ petition assails an appellate order dated April 25, 2025 passed under section 107 of the WBGST, Act, 2017/ CGST Act, 2017 as also the adjudication order dated May 18, 2023 passed under section 73 of the said Act of 2017, which had been impugned before the appellate authority.

FACTS OF THE CASE:

2. Briefly, summed up the facts of the case as run in the writ petition are as follows:-

- a. The petitioner no.1 (hereafter “the petitioner”) was served with six several notices to show cause on March 15, 2023 alleging that the petitioner had provided “*services in relation to transport of goods by road and tax paid under forward charge method*” and that as “*per data available in GST B.O. portal*” the petitioner had declared its “*turnover of outward supply in GSTR3B filed for the period 2020-21 which was less than the actual supplies.*”
- b. The notice to show cause required the petitioner to file its reply within April 03, 2023 along with supporting documents and also to appear for personal hearing on the same date i.e. April 03, 2023.
- c. Since, the petitioner had received six notices to show cause in respect of several financial years ranging from 2017-2018 to 2022-2023, the petitioner found it nigh impossible to prepare replies to the said show cause many notices after going through the relevant records and as such, the petitioner appeared before the Proper Officer through its authorized agent on the appointed day i.e. March 31, 2023.
- d. The petitioner sought for time to file detailed reply to the notice to show cause verbally. However, such time was not granted and after about two months from the date of the hearing, an adjudication order was passed on May 18, 2023, on a ground entirely different from the one that was raised in the notice to show cause.
- e. To be precise, while the allegation levelled in the notice to show-cause was that the declaration as regards “*turnover of outward supply*” made by the petitioner in Form GSTR 3B was less than the actual supplies,

the adjudication order held the petitioner liable to tax on the ground that as the petitioner had opted to pay tax under the Forward Charge Mechanism by issuing tax invoice under Forward Charge Mechanism on April 28, 2020 therefore in terms of the Notification No.20/2017 – Central Tax (Rate) dated August 22, 2017 [Principal notification No. 11/2017 – Central Tax (Rate), dated the 28th June, 2017] the supplies made by the petitioner under the Reverse Charge Mechanism from 28th April 2020 to 31st March 2021 would be “*treated as taxable @6% central tax*” and tax will be payable by the petitioner thereon under the Forward Charge Mechanism. It is the petitioner’s case that the petitioner had made supplies under Reverse Charge Mechanism only.

- f. Assailing the said adjudication order dated May 18, 2023 petitioner approached this Court by filing W.P.A. 6247 of 2024 which was disposed of by an order dated April 01, 2024 thereby granting liberty to the petitioner to approach the appellate authority under Section 107 of the said Act of 2017.
- g. The petitioner then carried the said adjudication order dated May 18, 2023 in appeal before the appellate authority. Before the appellate authority, the petitioners took a specific point that the adjudicating authority had veered away from the confines of the notice to show-cause and that if the adjudicating authority wished to base the adjudication order on any ground other than the ones taken in the notice to show-cause it was obligatory on the part of the adjudicating

authority to afford an opportunity of hearing to the petitioner in terms of the provisions of section 75(7) of the said Act of 2017.

h. The appellate authority took up the petitioner's appeal for hearing and disposed of the same by the order impugned by confirming the adjudication order. Feeling aggrieved thereby the petitioners have approached this Court by way of the instant writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Mr. Kanodia, learned advocate appearing for the petitioners has taken this Court through the notice to show-cause, the adjudication order, the appeal filed before the appellate authority as well as the appellate order in order to demonstrate that the adjudicating authority has starkly deviated from the notice to show-cause.
4. He submits that it will be evident on a comparison of the notice to show-cause and the adjudication order that the adjudication order proceeds on a basis entirely different than the one indicated in the notice to show-cause. It is submitted that such a course was impermissible in terms of the provisions of section 75(7) of the said Act of 2017. Mr. Kanodia asserts that if at all, the adjudicating authority was desirous of passing an order on a ground different than the ones mentioned in the notice to show-cause, it must have issued a fresh notice to show cause and should have afforded an opportunity of hearing to the petitioners on the said point.
5. He then places page 28 of the appellate order (at page 155 of the writ petition) to demonstrate that the appellate authority agreed with the petitioner on the point that the adjudicating authority had acted in

violation of the provision of section 75(7) of the said Act of 2017, yet, the appellate authority proceeded to confirm the adjudication order by observing that the same was a “*technical issue*”.

6. In support of his contention Mr. Kanodia relies on a co-ordinate Bench judgment of this Court in the case of ***Duakem Pharma Pvt. Ltd. vs. Deputy Commissioner of Revenue***¹.
7. It is further submitted by the Mr. Kanodia that the notice to show-cause was based on certain ‘*data available in GST B.O. portal*’ i.e. data available in the GST back office portal. He asserts that since such data is within the special knowledge domain of the GST authorities it would not be available to the petitioners; therefore unless such data is provided to the petitioners the petitioners would not be in a position to give effective reply to the notice to show-cause.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

8. Mr. Chakraborty, learned advocate appearing for the respondents, submits that the adjudicating authority had taken a decision on the basis of the material already on record. It is submitted that since the relevant material were already on record and it was only a matter of calculation, the provisions of section 75(7) of the said Act of 2017 do not get attracted. In support of his contention he relied on a judgment of the Hon’ble Allahabad High Court in the case of ***Mayank Mineral vs. State of U.P.***²

¹ (2025) 29 Centax 387 (Cal.)

² (2025) 174 taxmann.com 636 (Allahabad)

ANALYSIS &DECISION:

9. Heard learned advocates appearing for respective parties and considered the material on record.
10. It cannot be disputed that the notice to show-cause issued to the petitioners was only confined to the point that the turnover of outward supplies that had been declared by the petitioners in the return filed in form GSTR 3B was less than the actual supplies. The petitioner accordingly placed its case before the adjudicating authority to answer the said point only. The adjudication order reveals that since after wading through the records produced by the petitioners, the Proper Officer/adjudicating authority had found that the petitioner had opted to pay tax under the Forward Charge Mechanism and had issued tax invoice under Forward Charge Mechanism on April 28, 2020. It was on such basis that the adjudicating authority came to the conclusion that in terms of the notification dated August 22, 2017, the petitioners being a goods transport agency was liable to pay tax @12% (6% CGST + 6% SGST) on the supplies made by the petitioners even under the Reverse Charge Mechanism treating the same to be done under Forward Charge Mechanism.
11. Such a conclusion amounts to changing the basis of the notice to show-cause. Such a course is not permissible under section 75(7) of the said Act of 2017 which reads as follows:-

“(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.”

12. The provision clearly carries a negative mandate prohibiting confirmation of demand on any ground other than the grounds specified in the notice to show cause. In the case at hand the adjudicating authority has done exactly that which has been prohibited.
13. Even otherwise, it is now very well settled that an order cannot travel beyond the confines of the preceding notice to show-cause and a person who has been issued a notice to show cause on a particular point cannot be blindsided by passing an order on an entirely different point. In fact Section 75(7) of the said Act of 2017 is a statutory expression of the said very well settled principle of law only.
14. It is noticed that the appellate authority has acknowledged the aforesaid point raised by the petitioner but has trivialised the same by stating that it was a “*technical issue*” as it pertained to mere quantification. In the considered opinion of this Court, the issue could not have been said to be a mere technical issue. The issue involves the question as to whether or not the supplies made by the petitioner under the Reverse Charge Mechanism could also be treated as having been made under the Forward Charge Mechanism on the strength of the said notification dated August 22, 2017. The adjudicating authority’s interpretation of the situation could not have been unilaterally imposed on the petitioner in violation of a mandatory statutory provision. The appellate authority should also not have made light of such statutory violation by a statutory authority by calling it a mere technicality.

15. Further, there is substance in the submission of the petitioners that since the notice to show-cause is based on 'data available in GST B.O. portal' i.e. data available in the GST back office portal therefore they may not have access to the same as the same would be within the special knowledge domain of the GST authorities. In such a situation the petitioners would not have effective opportunity to deal with the notice to show cause.
16. The judgment in the case of **Mayank Mineral** (supra) cited by Mr. Chakraborty cannot aid the inasmuch as the said case did not involve a situation where the order was passed on a ground other than the ground mentioned in the show cause notice. It was a case where the amount was not quantified in the show cause notice. Such is not the case here
17. For all the reasons aforesaid, both the appellate order no. ZD190425045145F dated April 25, 2025 as well as the adjudication order no. ZD190523016773B dated May 18, 2023 are set aside.
18. The matter is remanded to the file of the Proper Officer for reconsideration of the entire issue upon affording an opportunity of hearing to the petitioners. The petitioner shall be provided all relevant information based on which the notice to show-cause had been issued and the Proper Officer shall be entitled to issue an additional show-cause notice framing such issues and indicating such grounds that the Proper Officer wishes to in accordance with law. The petitioner shall also be entitled to file its reply thereto in accordance with law.
19. It is clarified that if additional show-cause notice is issued and/or the adjudication proceedings are conducted and adjudication order is passed

in terms of this order, the petitioner shall not be entitled to raise any objection to the same on the ground of limitation unless the petitioner was entitled to raise such ground at the time when the initial show-cause notice was issued.

- 20.** It is needless to mention that since the appellate order has been set aside, therefore the Proper Officer shall, while deciding the matter, not be influenced by any observation made therein.
- 21.** WPA 12666 of 2025 stands disposed of with the above observations. No costs.
- 22.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai, J.)