

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

BEFORE:

THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 20118 of 2025

With

CAN 1 of 2025

M/s. Jyoti Tar Products Private Limited & Anr.

Vs.

The Deputy Commissioner, State Tax, Shibpur Charge, WBGST & Ors.

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

For the State : Mr. Tanoy Chakraborty, Adv.
Mr. Saptak Sanyal, Adv.

Hearing Concluded on : 28.01.2026

Judgment on : 27.02.2026

Om Narayan Rai, J.:-

1. The instant writ petition and the connected application being CAN 1 of 2025 together assail a notice to show cause dated August 06, 2025 under Section 74 of the West Bengal Goods and Services Tax Act, 2017 (hereafter "the said Act of 2017") and an adjudication order dated November 04, 2025 passed thereafter.

FACTS OF THE CASE:

2. The relevant facts leading to the institution of the writ petition and the application need to be noticed first:-

- a.** The petitioners claim to be engaged in the business of trading in crude tar and other allied products.
- b.** A notice dated July 10, 2024 was issued by the respondent no.1 to the petitioner no.1 (hereafter “the petitioner”) in FORM GST DRC-01A in terms of Rule 142 (1A) of the West Bengal Goods and Services Tax Rules, 2017 (hereafter “the Rules”) thereby intimating the petitioner about the tax ascertained as being payable by it under Section 74(5) of the said Act of 2017. The said notice was accompanied by an annexure containing the relevant factual summary pertaining to the said case whereby the petitioner was advised to *“pay the amount of Tax (CGST: Rs. 18,02,276.00 and SGST : Rs. 18,02,276.00) as ascertained above along with applicable interest in full by 20/07/2024, failing which Show Cause Notice shall be issued under section 73(1)/74(1)”*.
- c.** The petitioner furnished a detailed reply dated July 18, 2024 (along with Part B of FORM GST DRC-01A dated July 20, 2024) to the said intimation/notice dated July 10, 2024.
- d.** The respondent no.1 was not satisfied with the petitioner’s response to the intimation and as such on August 08, 2024 the said respondent issued a notice calling upon the petitioner to show cause, as to why should the petitioner not pay the amounts demanded in the said notice under different heads i.e. tax, interest and penalty.
- e.** Assailing the said show cause notice, the petitioners approached this Court by filing W.P.A. No. 22106 of 2024 which was dismissed by an order dated December 13, 2024.

- f.** The petitioners carried the matter in appeal being M.A.T. No. 2291 of 2024. The said appeal was allowed by an order dated January 21, 2025 directing the authority to *“consider the reply dated July 18, 2024 to the intimation issued earlier, deal with those issues and then proceed to issue a show-cause notice”*.
- g.** Upon the appellate order being communicated to the respondents, an order dated April 17, 2025 was passed by the respondent no.1 thereby intimating the petitioner that *“As per order dated 21-01-2025 of the Hon’ble Division Bench of Calcutta High Court in MAT 2291 of 2024 with IA NO: CAN 1 of 2024 the show-cause notice issued under Section 74(1) of the Act dated 8th August, 2024 is set aside and the matter is remanded back to the assessing authority to consider the reply dated 18th July, 2024. Now GST BO portal does not allow to Set aside/Drop the Show-cause notice and issue a fresh Show-cause notice within the same Adjudication case ID. Hence in compliance of the order of the Hon’ble Calcutta High Court [Sec 117(8)] the instant Case ID: AD190724005007A is being dropped and new Adjudication proceedings for the period 2023-24 are initiated vide Case ID: AD190425017080G dated 17-04-2025.”*
- h.** Thereafter, on July 18, 2025 the respondent no.1 issued another notice in FORM GST DRC-01A in terms of Rule 142 (1A) of the said Act of 2017 thereby intimating the petitioner about the tax ascertained as being payable by it under Section 74(5) of the said Act of 2017. As in the earlier round, the said notice was accompanied by an annexure containing the relevant factual summary pertaining to the said case whereby the petitioner was advised to *“pay the amount of Tax (CGST: Rs. 18,02,276.00*

and SGST : Rs. 18,02,276.00) as ascertained above along with applicable interest and penalty U/s 74 by 23/07/2024, failing which Show Cause Notice shall be issued under section 73(1)/74(1)”. It is not in dispute that the earlier notice/intimation and its annexure and the second notice and its annexure are substantially same.

- i.** The petitioner replied to it in a similar manner as in the earlier round on July 24, 2025.
- j.** Ultimately on August 06, 2025, the respondent no.1 issued a notice calling upon the petitioner to show cause as why should it not be held liable to make payment of tax, interest and penalty as indicated therein. The notice records a *prima facie* satisfaction that input tax credit (hereafter ITC) had been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax.
- k.** Assailing the said show cause notice the petitioners have approached this Court by filing the instant writ petition.
- l.** During pendency of the writ petition, the proper officer went ahead and passed an adjudication order dated November 04, 2025, thereby confirming the demand raised by the notice to show cause. The said order has also been brought on record and put to challenge by way of an application being CAN 1 of 2025.
- m.** Parties were heard both on the writ petition as well as the application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 3.** A brief summary of the submissions made by Mr. Kanodia, learned Counsel appearing for the petitioner (both orally as well as in the written notes) is as follows:-

- a.** The pre-show cause notice in FORM GST DRC-01A was issued by the respondent no.1 denying ITC to the petitioner on the grounds of retrospective cancellation of registration of its suppliers.
- b.** A person fulfilling the conditions mentioned in Section 16(2) of the said Act of 2017 would be entitled to avail ITC.
- c.** In order to prove that the petitioner had received the goods from its suppliers, the petitioner had submitted tax invoices, E-way bill, weighbridge receipts, bank statement, copy of ledger of books of accounts and screenshot of GST portal showing the return filing status of the said suppliers.
- d.** The petitioner was not required to produce any other document except those mentioned in Section 16(2) of the said Act of 2017, so as to prove the genuineness of the transaction.
- e.** The show cause notice had been issued by the respondent no.1 with a pre-meditated mind thereby questioning the genuineness of the transaction only due to absence of documents like acknowledgement of receipt of goods, proof of payment of freight charges, consignment notes/lorry receipts, Goods Received Note (GRN), Purchase Order, Inspection Report, Stock-in-Out register, vehicle in/out register and factory gate pass register.
- f.** Such documents were not required inasmuch as E-way bills produced by the petitioner were sufficient to prove the movement of goods. E-way bills contain the vehicle numbers and the same could be independently verified by the proper officer to check the movement of the goods.

- g.** The respondent has not pointed out a single discrepancy in the statutory documents submitted by the petitioner, which include all relevant details such as the vehicle numbers used for transportation of goods but has instead asserted that the petitioner failed to produce records of payments made to transporters and the carriage expenses ledger to substantiate the movement of goods, which in the case of the petitioner couldn't have been asked for as freight was within the payment domain of the supplier and not the petitioner.
- h.** The supplier was registered at the time of the transaction. Such fact has not been disputed by the department at all and the petitioner had provided portal screenshot of return filing status also. There is no statement made in the show cause notice that the suppliers had not paid tax.
- i.** In support of the contention that ITC cannot be denied to the recipient due to default of the supplier, he relied on a judgment of the Hon'ble Division Bench of this Court in the case of **Suncraft Energy Private Limited vs. Assistant Commissioner, State Tax, Ballygunge Charge**¹, It was also pointed out that the said judgment remained unfazed even before the Hon'ble Supreme Court inasmuch as the revenue's appeal thereagainst being SLP (C). Nos. 27827-27828 of 2023 (**Assistant Commissioner, State Tax vs. Suncraft Energy Private Limited**)² was dismissed by the Hon'ble Supreme Court by an order dated December 14, 2023.

¹ (2023) 9 Centax 48 (Cal.)

² (2023) 13 Centax 189 (S.C.)

- j. It was asserted that the Hon'ble Supreme Court has repeatedly held that buyers cannot be blamed if a supplier who appeared to be legitimate on government records at the time of the transaction was later found to be bogus or its registration was cancelled retrospectively. It was contended that any due diligence on the supplier's GSTIN at the time of the relevant transaction was sufficient and it was not the buyer's duty to verify the supplier's operational status beyond that.
- k. To buttress the aforesaid contention, judgments/orders passed in the following cases were cited:-
- i. **National Plasto Moulding vs. State of Assam**³ rendered by the Hon'ble Gauhati High Court;
 - ii. **Arise India Limited & Others vs. Commissioner of Trade & Taxes, Delhi & Others**⁴ passed by the Hon'ble High Court of Delhi;
 - iii. **State of Maharashtra vs. Suresh Trading Company**⁵ passed by the Hon'ble Supreme Court;
 - iv. **Taparia Overseas (P) Limited vs. Union of India**⁶ and SLP dismissed by Hon'ble Supreme Court in SLP (C) No. 23672 of 2003 on March 24, 2006;
 - v. **Commissioner Trade & Tax Delhi vs. Shanti Kiran India (P) Limited**⁷ passed by the Hon'ble Supreme Court;
 - vi. **Singhal Iron Traders vs. Additional Commissioner**⁸ passed by the Hon'ble Allahabad High Court;

³ (2024) 21 Centax 182 (Gau.)

⁴ MANU/DE/3361/2017

⁵ MANU/SC/1740/1997 : (1997) 11 SCC 378

⁶ 2003 (161) E.L.T. 47 (Bom.)

⁷ (2025) 35 Centax 222 (S.C.)

⁸ (2025) 36 Centax 81 (All.)

- vii. ***Roshan Sharma vs. Deputy Commissioner of Revenue, State Tax & Another***⁹ passed by the Hon'ble Supreme Court.
 - viii. ***M/s. Shraddha Overseas Private Limited & Another vs. The Assistant Commissioner of State Tax, Chandni Chawk & Princep Street Charge & Others***¹⁰ passed by the Hon'ble High Court at Calcutta;
 - ix. ***Assistant Commissioner of State Tax, ITC Investigation Unit vs. LGW Industries Limited & Others***¹¹ passed by the Hon'ble Division Bench of this Court in appeal against ***LGW Industries Limited & Others vs. Union of India & Others***¹²;
 - x. ***M/s. Asian Hotels (East) Limited & Another vs. Deputy Commissioner of State Tax***¹³ passed by a Co-ordinate Bench of this Court.
1. Retrospective cancellation of supplier's registration would not invalidate past availment of ITC and the subsequent finding that a supplier is non-existent does not by itself establish that the supplier was not there even at the time of supply.
 - m. If all documents and payments are genuine and align with GST records, ITC should not be denied.
 - n. Attention of the Court was invited to internal page no. 7 of the show cause notice, wherein it has been stated that "*Hence it appears that there are enough reasons to believe that input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of*

⁹ SLP (C) No. 31296 of 2025, decided on November 10, 2025

¹⁰ M.A.T. No. 1860 of 2022, decided on December 16, 2022

¹¹ M.A.T. No. 855 of 2022, decided on September 16, 2022

¹² MANU/WB/0923/2021

¹³ (2024) 21 Centax 44 (Cal.)

facts to evade tax. Therefore, notice is to be served requiring you to pay such tax along with interest under Section 50 and a penalty equivalent to the tax specified in the notice as per provisions laid down under Section 74 of the GST Act”.

- o.** ITC was availed on the basis of valid tax invoices, which are duly reflected in FORM GSTR-2A of the Petitioner. It is evident from the GST portal that the concerned suppliers have filed both GSTR-1 and GSTR-3B for the relevant period. The ITC so availed was duly reported in the petitioner’s monthly and annual GST returns, and the department had complete knowledge of the inward suppliers as reflected in FORM GSTR-2A. There has been no suppression of facts with respect to inward supplies, and the department was fully aware of the same from the records available on the portal.
- p.** The respondent No. 1 has not provided any material on record to establish any collusion between your petitioner and its suppliers for availing inadmissible or fake credits. In the absence of any suppression or collusion, the extended period of limitation under Section 74 of the CGST/WBGST Act cannot be invoked.
- q.** The show cause notice reveals that the respondent no.1 has already made up its mind that the transactions between the petitioners and its suppliers are not genuine.
- r.** Since the concerned authority has predetermined the issue therefore answering the show cause notice would be an empty formality.

s. In support of the submissions that a show cause notice issued with predetermined mind-set should not be allowed to stand, the following judgments delivered by the Hon'ble Supreme Court were relied on:-

i. ***Siemens Limited vs. State of Maharashtra & Others***¹⁴

ii. ***ORYX Fisheries Private Limited vs. Union of India & Others***¹⁵

t. In support of the submissions that when revenue invokes the extended period of limitation burden is cast upon it to prove suppression of fact, the following judgments were relied on:-

i. ***Cosmic Dye Chemical vs. Collector***¹⁶;

ii. ***Continental Foundation Jt. Venture vs. CCE, Chandigarh***¹⁷;

iii. ***Padmini Products vs. CCE***¹⁸;

iv. ***CCE vs. Chemphar Drugs & Liniments***¹⁹;

v. ***Gopal Zarda Udyog vs. CCE***²⁰;

vi. ***Lubri -Chem Industreis Ltd. vs. CCE***²¹;

vii. ***Chandrashekhar Yadav vs. State of U.P. and Ors***²²;

viii. ***Ajnara Realtech Ltd. vs. State of Uttar Pradesh***²³;

ix. ***M/s. Haldia Nirman Projects Private Limited & Anr. vs. The Additional Commissioner of CGST& CX, Haldia Commissionerate & Others***²⁴

¹⁴ MANU/SC/8736/2006 : (2006) 12 SCC 33

¹⁵ MANU/SC/0921/2010 : (2010) 13 SCC 427

¹⁶ 1995 (75) E.L.T. 721 (SC)

¹⁷ MANU/SC/3646/2007: 2007 (216) E.L.T. 177 (S.C.)

¹⁸ 1989(43) ELT 195(SC)

¹⁹ 1989 (40) ELT 276 (SC)

²⁰ 2005 (188) ELT 251 (SC)

²¹ 1994 (73) ELT 257 (SC)

²² (2025) 28 Centax 414 (All.)

²³ (2025) 28 Centax (All.)

²⁴ MAT 1003 OF 2024

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. The submissions made by Mr. Chakraborty, learned Counsel appearing for the respondents (both orally as well as in the written notes) are summed up hereunder:-

- a.** The petitioner's contention is that the respondent no.1 has a predetermined mindset and has in effect passed an adjudication order is misconceived. The statutory scheme contemplates a multi-stage adjudication process, beginning with a pre-show cause notice, followed by a show cause notice, thereby affording the registered person adequate opportunity to present its case. This is followed by a well-defined appellate mechanism.
- b.** The multi-tier adjudicatory framework under the GST regime is designed to ensure that registered taxable persons are granted sufficient opportunities to present their cases.
- c.** The petitioner has prematurely invoked the writ jurisdiction of this Court at the stage of a show cause notice, wherein the assessing authority has merely recorded a *prima facie* view. Such *prima facie* stand was required to be taken pursuant to the order of the Hon'ble Division Bench on the basis of the reply filed by the writ petitioner.
- d.** The show cause notice cannot be said to be any final determination or adjudication and the same would only occur after consideration of the petitioner's reply.
- e.** The said Act of 2017 is a self-contained Code that provides adequate remedies, including appellate recourse, in the event of an adverse order. The petitioner ought to raise all objections before the assessing authority

in response to the show cause notice and seek redress under the statutory scheme, if necessary.

- f. A judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Haldia vs. Krishna Wax Private Limited***²⁵ was relied on in support of the aforesaid submission.
- g. He further submitted that the petitioner's reliance on ***ORYX Fisheries Private Limited*** (supra) is misplaced, as that decision arose in the context of a challenge post-adjudication, after the petitioner had exhausted the statutory appellate mechanism, unlike the present case where the writ petition has been filed at the show cause stage.

SUBMISSIONS OF THE PARTIES AS REGARDS THE ADJUDICATION ORDER:

- 5. As regards the adjudication order passed during pendency of the writ petition which has been impugned by way of a separate application filed in connection of the instant writ petition as aforesaid, it was submitted by Mr. Kanodia that the same was also passed without affording any opportunity of personal hearing to the writ petitioner. Mr. Chakraborty, learned Advocate appearing for the respondents could not offer much resistance to such argument.

ANALYSIS & DECISION:

- 6. Law as regards interference with show cause is well settled. A mere notice to show cause does not give rise to any cause of action since it does not constitute an adverse order affecting the rights of the party and that being so a writ court is loath to interfere with a show cause notice unless an

²⁵ (2020) 12 SCC 572

exceptional case of total lack of jurisdiction to issue such a notice or patent illegality in the such notice is made out (See- ***Union of India & Another vs. Kunisetty Satyanarayana***²⁶; ***Union of India & Another vs. Vicco Laboratories***²⁷; ***Secretary, Ministry of Defence & Others vs. Prabhash Chandra Mirdha***²⁸).

7. Indeed if the show cause notice has been issued with a closed or predetermined mindset that would fall within the category of patent illegality and would incur the wrath of a writ court.
8. The scope of enquiry in the present proceedings would therefore have to be limited to see as to whether the show cause notice impugned suffers from any of the aforesaid two incurable defects absent which this Court would refrain from interfering with the said notice.
9. Section 74 of the said Act of 2017 vests power with the relevant proper officer to issue notice to show cause if circumstances justifying issuance thereof exist. The first limb of the said Section is relevant for the present purpose. The same reads thus:-

“74(1). Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.”

²⁶ (2006) 12 SCC 28

²⁷ (2007) 13 SCC 270

²⁸ (2012) 11 SCC 565

10. Thus the proper officer would be justified in issuing a show cause notice under Section 74 of the said Act of 2017 if “*it appears*” to him that *any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.*
11. A challenge to a notice to show cause in cases like the one at hand would be required to be examined in the light of the ingredients of the aforequoted provision, keeping in mind that while assessing the worth and validity of such notice the writ Court would only be required to see whether the primary ingredients for issuance of the notice to show cause i.e. the jurisdictional facts *prima facie* exist or not and whether the notice issuing authority has jurisdiction to issue such notice or not. At that stage the writ Court would not undertake an enquiry into the truth of the charges or allegations levelled. Adopting a divergent course, in the considered opinion of this Court, would force a full-fledged adjudication before the quasi-judicial decision making exercise is even undertaken by the relevant authority. In such regard the observations of the Hon’ble Supreme Court in the case of **Krishna Wax Private Limited** (supra) cited by Mr. Chakraborty may be noticed:-

“13. It must be noted that while issuing a show-cause notice under Section 11-A of the Act, what is entertained by the Department is only a prima facie view, on the basis of which the show-cause notice is issued. The determination comes only after a response or representation is preferred by the person to whom the show-cause notice is addressed. As a part of his response, the person concerned may present his view point on all possible issues and only thereafter the determination or decision is arrived at. In the present case even before the response could be made by the respondent and the determination could be arrived at, the matter was carried in appeal against the

said internal order. The appellant was therefore, justified in submitting that the appeal itself was premature.”

[Emphasis supplied]

- 12.** In the instant case, the show cause notice has alleged that the petitioner has claimed to have received inward supply of goods from certain persons whose GST registrations got cancelled under Section 29(2)(e) of the said Act of 2017, with retrospective effect, on the ground that such registration had been obtained by means of fraud, wilful misstatement or suppression of facts. The notice issuing authority has doubted the genuineness of the transactions and further alleged that *upon examination of the ITC chain it appears that the tax charged on the supply has not been paid to the government by the supplier at source point of the chain and ITC has been passed on fraudulently.* The notice delineates a chain of the petitioner's suppliers and alleges connivance between the petitioner and its suppliers in tax evasion through fraudulent passing on of ITC in the following manner:-

“Moreover as per data available in CTD database and moving further down the ITC chain of JYOTI TAR PRODUCTS PRIVATE LIMITED the following facts came to the fore:

(a) EJAJUL HAQUE SK (Proprietor) of M/s STAR ENTERPRISES (GSTIN: 19NKJPS6613F1ZI) claimed majority of ITC from M/s JAY LAXMI TRADERS (GSTIN: 18KXCPS4738E1Z0) and M/s SAHU TRADING CO (GSTIN: 33PRLPS4836M1ZQ). M/s JAY LAXMI TRADERS has been cancelled on application by taxpayer on 11/05/2023. The date of registration of JAY LAXMI TRADING was 25/11/2022. M/s SAHU TRADING Co was cancelled suo-moto effective from 12/11/2022.

(b) NITAI DAS (Proprietor) of M/s SAI GANESH ENTERPRISE (GSTIN: 19CARPD2017D1ZZ) claimed majority of ITC from M/s JAY LAXMI TRADERS (GSTIN: 18KXCPS4738E1Z0).

(c) VISHAL JAISWARA (Proprietor) of M/s JAISWARA ENTERPRISE (GSTIN: 19CRIPJ3681D1ZZ) claimed majority of ITC from M/s SAHU TRADING Co (GSTIN: 33PRLPS4836M1ZQ) & M/s AAHANA ENTERPRISE (GSTIN: 19HBOPP0633L1Z0). M/s SAHU TRADING CO WAS CANCELLED SUO-MOTO EFFECTIVE FROM 12/11/2022.

M/s AAHANA ENTERPRISE was cancelled on application by taxpayer on 07/07/2023 whereas the date of registration was 18/04/2023. M/s AAHANA ENTERPRISE (GSTIN: 19HBOPP0633L1Z0) claimed majority of ITC from M/s OMEX TRADE CENTER (GSTIN: 19AAIFO1466C1ZB). M/s OMEX TRADE CENTER was cancelled suo-moto u/s 29(2)(e) of the CGST/WBGST Act, 2017. M/s OMEX TRADE CENTER (GSTIN: 19AAIFO1466C1ZB) claimed majority of ITC from M/s ARMHER ENTERPRISES PRIVATE LIMITED (GSTIN: 21AAVCA9668G1Z5). M/s ARMHER ENTERPRISES PRIVATE LIMITED was cancelled suo-moto u/s 29(2)(e) of the Act.

(d) PRAMOD SHARMA (Proprietor) of HANUMAN TRADING (GSTIN: 19BKNPS7531Q1Z0) claimed majority of ITC from M/s S.A. TRADING CO (GSTIN: 10DRFPG4670D1ZB). M/s S.A. TRADING CO has been cancelled on application by taxpayer on 29/11/2023 whereas the effective date of registration was 11/02/2022.

(e) TANUSHREE MONDAL (Proprietor) pf M/s MONDAL ENTERPRISE (GSTIN: 19IBUPM1258P1ZH) claimed majority of ITC from M/s S.A. TRADING CO (GSTIN: 10DRFPG4670D1ZB) and M/s SAHU TRADING CO (GSTIN: 33PRLPS4836M1ZQ).

(f) SHYAMAL DHALI (Proprietor) of M/s SHYAMAL TRADERS (GSTIN: 19AOFPD2914P1ZP) CLAIMED ITC solely from M/s JAY LAXMI TRADERS (GSTIN: 18KXCPS4738E1Z0) and M/s SAHU TRADING CO (GSTIN: 33PRLPS4836M1ZQ).

Thus from the above study of ITC chain it appears that there was routing of invoices through a series of shell companies/dummy companies and transfer of Input Tax Credit from one company to another in a circular, linear fashion. All the stated firms were cancelled at one point or another.

Thus prima facie it appears that there was an element of connivance. Thus the judicial pronouncement referred to above is not squarely applicable in this case.”

13. After having levelled the aforesaid charges in great details, the petitioner has been called upon by the relevant authority to show cause why it should not be held liable to pay tax, interest and penalty as indicated in the said notice to show cause. The show cause notice thus has clearly made out a *prima facie* case that the petitioner is required to answer.

14. The petitioner has strongly relied on Section 16(2) of the said Act of 2017 to assert that fulfilment of all the conditions stipulated therein would entitle it to ITC. Such reliance is well founded. However, the petitioner has presumably missed the aspect that the standard of proof required for

satisfaction of the listed conditions would vary by case. To be precise, where the genuineness of the transaction between the purchaser and the supplier is undisputed even basic documentation may suffice but in cases where the transaction's legitimacy is doubted a higher standard of proof would be required, particularly, in the light of the burden of proof as mandated by Section 155 of the said Act of 2017. In such cases a person cannot assert that basic documents like invoices, e-way bills etc. must always be treated as the "be-all and end-all" to support eligibility for ITC.

15. This Court is unable to agree with the submissions of Mr. Kanodia that the show cause notice has been issued with a predetermined mindset. The petitioners would do well to remember that the Hon'ble Division Bench had while disposing of MAT 2291 of 2024 (i.e. the petitioner's own appeal) by the order dated January 21, 2025 observed that "*when the authority has thought fit to exercise its powers under section 74(5), he is enjoined upon a duty to consider the reply before it takes a decision to issue a show-cause notice under section 74(1) of the Act*". The authority has proceeded to do so in the case at hand. If any reply furnished to pre-show cause notice is to be considered, the relevant authority will obviously apply its mind to it and then either return a *prima facie* finding that the case warrants issuance of a show cause notice or drop the proceeding. Application of mind would be evinced by the reasons supplied in support of the ultimate conclusion reached. In the instant case that is exactly what has been done. The GST authority cannot be subjected to a double whammy or be placed in legal double-bind by the petitioner who initially faulted the authority for not considering the petitioner's reply to the show cause notice and who has

subsequently turned around to assert that the show cause notice is pre-meditated since it details the reasons for not agreeing with the petitioner's reply to the pre-show cause. To accept such an argument would lead to a classic text-book case of "*heads I win tails you lose*" effectively penalising the GST authority for its own transparency and diligence.

- 16.** A meaningful reading of the show cause notice does not lead to the inference that the same has been issued with a premeditated mind. Mr. Kanodia's specific reference to the observations at page 7 of the notice to show cause to contend that the GST authority has prejudged the issue lacks appeal. The relevant observations may be noticed once again:-

"Hence it appears that there are enough reasons to believe that input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of facts to evade tax. Therefore, notice is to be served requiring you to pay such tax along with interest under Section 50 and a penalty equivalent to the tax specified in the notice as per provisions laid down under Section 74 of the GST Act."

- 17.** The expression "reasons to believe" is not unknown to tax jurisprudence. Its usage in the notice to show cause only indicates presence of reasons sufficient enough to issue notice calling upon the registered tax payer to pay the taxes which the GST authority believes to be payable by the tax payer. Similarly, the expression "*notice is to be issued requiring you to pay tax ...*" cannot also be read as a definite conclusion reached by the GST authority. The text of the notice must be read in the full context of the factual setting. It cannot be lost sight of that the notice issuing authority has at the end of almost every paragraph referring to a certain allegation stated that its assertions are "*prima facie*". The profuse use of the expression "*prima facie*" in the impugned notice is clearly demonstrative of the fact that process is

still at the stage of inquiry and the show cause notice does not constitute a final verdict.

18. Mr. Kanodia has strenuously contended that e-way bills would be sufficient to prove movement of goods as the same contain details of vehicle numbers and the same can be verified by the proper officer to check the movement of goods. Mr. Kanodia's submissions are correct to some extent but then the same are not so weighty as to persuade the Court to hold that the GST authority could not have issued the show cause notice at all after the e-way bills being placed before it. Both e-way bills and weigh bridge slips are self-generated documents. E-way bills are generated prior to the commencement of the transportation. Therefore, the same may or may not by themselves be sufficient to prove actual movement of the goods in all cases. Evidentiary value thereof would vary from case to case. This Court hastens to clarify that while observing as above this Court is not expressing any opinion on the sufficiency or adequacy of the E-way bills specifically in the present case.

19. It will be for the petitioner to convince the GST authority that the documents submitted or to be submitted by it sufficiently establish the petitioner's eligibility to ITC. In such context, the observations of the Hon'ble Supreme Court in the case of ***State of Karnataka vs. Ecom Gill Coffee Trading Private Limited***²⁹ deserve notice:-

"15. Thus, the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and

²⁹ (2023) 18 SCC 809

sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the Revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. The aforesaid information would be in addition to tax invoices, particulars of payment, etc.

16. In fact, if a dealer claims input tax credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC. In fact, the genuineness of the transaction has to be proved as the burden to prove the genuineness of transaction as per Section 70 of the KVAT Act, 2003 would be upon the purchasing dealer. At the cost of repetition, it is observed and held that mere production of the invoices and/or payment by cheque is not sufficient and cannot be said to be proving the burden as per Section 70 of the 2003 Act.”

[Emphasis supplied]

20. Where the genuineness of the transactions has been doubted based on an ITC chain, it would be improper for the writ Court to interfere with a show cause notice holding that presence of e-way bills and weighment slips are sufficient to prove movement of goods. It should not be forgotten that the proper officer has a duty to check and prevent tax evasion and law allows such officer to issue a show-cause notice based on "reason to believe" derived from the ITC chain.

21. In a sense the notice is a mere invitation for the tax payer to prove the proper officer wrong as the burden to prove eligibility for ITC is on the tax payer only. While discouraging interference at the stage of issuance of show cause, the purpose of issuing a notice to show cause was succinctly

expressed by the Hon'ble Supreme Court in the case of **State of Uttar Pradesh vs. Brahm Datt Sharma & Another**³⁰ thus:-

“9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. ‘The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.’”

[Emphasis supplied]

22. Similarly, in the case of **Special Director and Another vs. Mohd. Ghulam Ghouse and Another**³¹ the Hon'ble Supreme Court once again sounded a note of caution to the High Courts in entertaining writ petitions against show-cause notices in the following manner:-

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of

³⁰ (1987) 2 SCC 179

³¹ (2004) 3 SCC 440

powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.”

[Emphasis supplied]

- 23.** In the case at hand the *bonafides* and genuineness of the transactions have been questioned by the GST authority and there is *prima facie* material to support the question raised, in such view of the matter, the GST authority cannot be faulted for issuing a show-case notice.
- 24.** As regards the judgments cited by Mr. Kanodia, insofar as the judgment in the case of ***National Plasto Moulding*** (supra), ***Arise India Limited & Others*** (supra) and ***Suncraft Energy Private Limited*** (supra) are concerned, the same hold that purchasing dealers who have entered into transactions *bonafide* cannot be held responsible for defaults of the sellers but then the said judgments in the same breath also add the rider that the relevant department would be free to act against the purchasing dealers in cases where *bonafides* have been questioned or a case of collusion is made out. In the case at hand the genuineness of the transactions between the petitioner and its sellers have been questioned by the revenue by seeking to demonstrate collusion. The said judgments therefore do not aid the petitioners.
- 25.** In the case of ***Singhal Iron Traders*** (supra) to there was no case of collusion made out and the revenue had proceeded only on the basis of the cancellation of the registration of the suppliers. The case at hand is not so.
- 26.** ***Taparia Overseas (P) Limited*** (supra) has no manner of application to the present case. The said case is an authority for the proposition that the effect of fraud is not to render the transaction void ab initio but renders it voidable

at the instance of the party defrauded and transaction continues valid until the party defrauded has decided to avoid it and that fraud intended by one man shall overturn a fair and bona fide contract or transaction with others.

27. *Shanti Kiran India (P) Limited* (supra) would also not aid the petitioner because that was a case where the Hon'ble Supreme Court had observed that "*neither the transactions nor the invoices have been doubted*". In the case at hand the genuineness of the transactions has indeed been doubted.

28. *Suresh Trading Company* (supra) is also of no avail to the petitioner since in the said case too it was admitted by the learned Advocate General appearing for the department that *the genuineness of the transactions between the registered dealer and the respondents was not in doubt and not disputed*. Such is not the case here.

29. *Roshan Sharma* (supra) is an interim order where the Hon'ble Supreme Court has issued notice upon recording the submissions made on behalf of the petitioner therein. The same does not help the petitioner at all.

30. *M/s. Shraddha Overseas Private Limited* (supra), ***LGW Industries Limited*** (supra) and would also not support the petitioners' case as the same was not one where genuineness of the transactions between the petitioner and its sellers had been questioned by the revenue by seeking to demonstrate collusion.

31. *Cosmic Dye Chemical* (supra), ***Continental Foundation Jt. Venture*** (supra), ***Padmini Products*** (supra), ***Chemphar Drugs & Liniments*** (supra), ***Gopal Zarda Udyog*** (supra), ***Lubri -Chem Industreis Ltd.*** (supra) are all cases that had walked up to the Hon'ble Supreme Court upon full-fledged adjudication process including statutory appeal before the appellate

authority. None of these cases (which held that burden of proof lies on the revenue in the context of the Central Excise Act, 1944) was decided at the stage of show cause notice. In such view of the matter, the same cannot aid the petitioner. That apart in the case at hand the burden of proof clearly lies on the petitioner in terms of Section 155 of the said Act of 2017. Furthermore, the decision as to whether burden has been discharged or not can only be taken in the adjudication proceedings and not at the show cause stage.

32. Chandrashekhar Yadav (supra) and **Ajnara Realtech Ltd.** (supra) were passed in cases where the show cause notice lacked the essential ingredients of Section 74 of the said Act of 2017. The instant case is clearly not so.

33. Siemens Limited (supra) and **ORYX Fisheries Private Limited** (supra) also do not help the petitioner inasmuch as in the facts of the present case, it has been found that the show cause notice is not a product of meditated mind-set. In the said case the authority had confronted the notice with conclusions while in the present case the authority has only stated its *prima facie* case.

34. For all the reasons aforesaid, the challenge to the show cause notice cannot be sustained. The impugned show cause notice is not interfered with.

35. Insofar as the adjudication order dated November 04, 2025 is concerned, it is evident from the said adjudication order that the same has been passed without affording any opportunity of personal hearing to the petitioner despite the same visiting the petitioner with adverse consequences.

- 36.** Such order is in clear violation of the provisions of Section 75(4) of the said Act of 2017 as also the principles of natural justice. In such view of the matter the same cannot be sustained. The order impugned dated November 04, 2025 therefore, stands set aside.
- 37.** The petitioner shall now have clear thirty days from date to reply to the notice to show cause. The proper officer shall consider such reply and pass appropriate order upon affording an opportunity of hearing to the petitioner in accordance with law. In case the petitioner fails to file reply within the time specified herein, its right to file reply would stand closed and the proper officer would be entitled to pass appropriate orders without the reply upon affording an opportunity of hearing to the petitioner in accordance with law. It is made clear that the entire period during which this writ petition remained pending before this Court shall stand excluded while computing the period of limitation prescribed for completion of the adjudication proceedings. It is clarified that the petitioner shall not be entitled to raise any objection, on the ground of limitation, to the adjudication proceedings conducted in terms of this order, unless such point was available to the petitioner at the time when the show cause notice was initially issued.
- 38.** WPA 20118 of 2025 as well as CAN 1 of 2025 stand disposed of with the above observations. No costs.
- 39.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)