IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Om Narayan Rai

WPA 20394 of 2025

NishantJagaty&Anr.
-Vs-
The Superintendent, CGST & CX,Rannge-III, Burrabazar Division, Kolkata North Commissionerate&Ors.

For the Petitioners	:	Mr. Jaweid Ahmed Khan, Adv. Mr. Talha Ahmed Khan, Adv. Mr. BhaskarSengupta, Adv.
For the CGST Authorities	:	Mr. Uday Shankar Bhattacharya,Adv. Ms. Sretapa Sinha, Adv.
For the Union of India	:	Mr. Arhat Biswas, Adv.
Hearing Concluded on	:	02.02.2026
Judgment on	:	02.02.2026

<u>Om Narayan Rai, J.:-</u>

1. Both the partners of an unregistered partnership firm named M/s Radiant Security have approached this Court by filing the present writ petition thereby assailing an order dated October 29, 2024 passed by the Superintendent, CGST and CX. By the said order, the firm (hereafter "the petitioners") have been found liable to pay a sum of Rs.72,000/- on account of Service Tax; Rs.1,440/- on account of E.Cessand Rs.720 /- on account of S & HSC. By the said order penalties have also been imposed upon the petitioners under Section 77(2) and Section 78 of the Finance Act, 1994 (hereafter referred to as 'the said Act of 1994').

2. The relevant facts leading to the filing of the present writ petition are that initially a notice to show cause-cum-demand dated October 15, 2019 had been issued to the petitionersby the Superintendent of Central Tax, Range-III thereby alleging that the petitioners had intentionally made wilful misstatement in ST-3 returns by suppressing the actual income for the financial year 2014-15 and 2016-17.The said notice indicated that proviso to Section 73(1) of the said Act of 1994 (extended period) was invoked for the purpose of holding the petitioners liable to tax.

3. The petitioners did not file his reply to the said notice but upon being afforded an opportunity of hearing, the petitioners filed their written submissions on January 15, 2020 before the notice issuing authority i.e. the Superintendent of Central Tax, Range-III. Thereafter, the said authority proceeded to pass the order impugned holding the petitioners liable to tax and penalty as indicated in the said order. Hence the writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. Mr. Khan, learned Advocate appearing for the petitioner submits that the order impugned is wholly without jurisdiction. It is submitted that the Superintendent having jurisdiction over Burrabazar Division has decided the petitioners' case while the petitioners' case can be adjudicated only by a competent authority exercising jurisdiction in respect of Bidhannagar. It is next submitted that in terms of a Circular bearing no. 130/12/2010-ST dated September 21, 2010 a Superintendent is not competent to decide cases involving taxability of service, valuation of service, eligibility of exemption and cases involving suppression of facts, fraud collusion, wilful misstatement etc.

5. Mr. Khan then submits that the present case is evidently one where allegation of suppression has been made and that being so; the Superintendent could not have decided the petitioners' case at all.

6. It is further submitted that in the present case the Superintendent has invoked the extended period in terms of the first proviso to Section 73(1) of the said Act of 1994 which the Superintendent was not authorised to do.Mr. Khan next submits that the case at hand involves issues relating to taxability of services which again is beyond the jurisdiction of the Superintendents.

7. It is also argued that the order pertains to two periods i.e. financial year 2014-15 and 2016-17 and such clubbing of financial years is not permissible.

8. Mr. Khan has also submitted that the petitioners' case relates to taxability of security services and in such cases liability to pay tax falls on the recipient of services and not on the provider thereof. It is submitted that since the petitioners' are providers of services, the petitioners could not be held liable to pay tax at all.

SUBMISSIONS ON BEHALF OF THE RESPONDENT CGST AUTHORITIES:

9. Mr. Bhattacharya, learned Advocate appearing for the respondent CGST Authorities submits that this writ petition should not be entertained inasmuch as the petitioners have an efficacious alternative remedy before the Appellate Authority in terms of Section 85 of the said Act of 1994. He hands up the Court a Circular bearing no. 1049/37/2016-CX dated September 29, 2016 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs (hereafter the

Circular of 2016) and submits that in terms of the said circular a case falling within the category of “taxes not paid and taxes short paid” can definitely be adjudicated upon by the Superintendent provided the same falls within the taxable limitof Rs.10,00,000/- (Rupees Ten Lakh).

10. It is further submitted that the ground of territorial jurisdiction that has been taken by the petitioners does not have any basis and that the Superintendent concerned who has adjudicated upon the petitioners’ case has territorial jurisdiction to decide the issue.

11. Mr. Bhattacharya has further submitted that the petitioners did not raise the issue of jurisdiction before the Superintendent and having participated before the Superintendent, the petitioners cannot now be heard on the jurisdictional issue raised for the first time before the writ Court.

ANALYSIS & DECISION:

12. Heard learned Advocates appearing for the respective parties and considered the materials on record.

13. It is well settled that mere existence of an alternative remedy before a statutory forum would not deter the writ Court from exercising jurisdiction under Article 226 of the Constitution of India if the case presented before the Court satisfies any of the following exceptions viz.-

a) violation of principles of natural justice;

b) infringement of fundamental right;

c) challenge thrown to the vires of an Act and/or provision(s) thereof;

d) an act wholly without jurisdiction.

14. In the case at hand serious issues as regards jurisdiction of the Superintendent to take up and decide the petitioners’ case have been raised.

In such view of the matter, entertainability of this writ petition cannot be questioned. What is required to be seen is whether the challenge thrown to the jurisdiction of the Superintendent can be sustained by the petitioners.

15. The relevant portion of the Circular of 2016relied on by Mr. Bhattacharya is extracted hereinbelow :-

> *"2. Adjudication of confiscation and penalty by the Central Excise Officers is provided in Section 33 of the Central Excise Act, 1944. Central Excise Officers have the power under Section I1A to adjudicate show cause notices demanding duty short paid or not paid and erroneously refunded. Similar powers exist in Service Tax under Section 73 and Section 83A of the Finance Act, 1994 (Notification No. 44/2016-Service Tax dated 28.09.2016 refers). It is hereby directed that henceforth powers of adjudication both in Central Excise and Service Tax shall be exercised, based on the monetary limit of the duty/ tax/ credit involved in a case, as under :-*

Sl. No.	***Central Excise Officer***	***Monetary Limits of duty/tax/credit demand for Central Excise and Service Tax***
1.	*Superintendent*	*Not exceeding rupees ten lakh*
2.	*Deputy/Assistant Commissioner*	*Above ten lakh but not exceeding rupees fifty lakh*
3.	*Additional/Joint Commissioner*	*Above fifty lakh but not exceeding rupees two crore*
4	*Commissioner*	*Without limit i.e. cases exceeding rupees two crores*

> *i) Cases involving taxability, classification, valuation and extended period of limitation shall be kept out of the purview of adjudication by Superintendents. Such cases, upto rupees 10 lakhs, shall also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding rupees 10 lakhs but not exceeding rupees 50 lakh."*

16. The provisions of para 2(i) of the said Circular of 2016 extracted hereinabove put it beyond the pale of doubt that the Superintendent would not have any authority to deal with cases related to *"taxability, classification, valuation and extended period of limitation"*even if the same are within the pecuniary limit of Rs.10,00,000/-. According to the said Circularof 2016, such cases even up to Rs.10,00,000/- would have to be *adjudicated by the Deputy Commissioner/Assistant Commissioner in addition to cases exceeding to rupees10 lakhs but not exceeding to rupees 50 lakhs.*

17. In the instant case, the notice to show-cause issued to the petitioners is clearly one where extended period of limitation has been invoked. The same would be apparent from paragraph 5 of the said notice at page 4 thereof (page 29 of the writ petition).The order impugned has also been passed based on the extended period of limitation as would be apparent from theobservations made in paragraph 5 of the said order at page 4 thereof (page 55 and 56 of the writ petition) under the following caption:-

> ***"5. REASONS FOR EXTENSION OF TIME PERIOD/INVOCATION OF EXTENDED PERIOD AS PER PROVISO TO SECTION 73(1) OF THE FINANCE ACT, 1994"***

18. In such view of the matter, the Superintendent, CGST and CX clearly lacked jurisdiction to adjudicate upon the petitioners' case. It is now well settled that inherent lack of jurisdiction would render an order passed by the authority concerned a nullity (See. - ***Kiran Singh -Vs- ChamanPaswan***[1]).

19. Mr. Bhattacharya's assertion that since the petitioners have participated in the hearing before the said Superintendent and have thereby submitted themselves to the jurisdiction of the said authority, therefore, they should not be permitted to question the jurisdiction now, is not worthy of being countenanced at all. It is well settled that a point of law, more so like the

[1]AIR 1954 SC 340

one at hand, which goes to the root of the matter can be taken at any stage of litigation even if the same was not taken earlier. In any case, if the Superintendent, CGST and CX did not have jurisdiction mere participation of the petitioners in the hearings held by the said authority or in the proceedings conducted by such authority would not have conferred jurisdictionon such authority. (See: ***JagmittarSainBhagat v. Health Services, Haryana***[2])

20. Since the adjudicating authority i.e. the Superintendent, CGST and CX has been found to have acted without jurisdiction in adjudicating the petitioners' case, no purpose would be served by sending the petitioners to the statutory Appellate Authority. The order impugned dated October 29, 2024,being wholly without jurisdiction, is set aside. Since the matter has been decided only on the issue of the jurisdiction of the Superintendent in view of the discussion hereinabove, the other points raised by Mr. Khan have not been gone into and have accordingly not been decided.

21. Since no affidavit has been invited, allegations made in the writ petition shall be deemed not to have been admitted by the respondents.

22. WPA 20394 of 2025 stands disposed of. No costs.

23. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)

[2](2013) 10 SCC 136