09.02.2026
Item No.29 (DL)
Court No.551
AJ.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

W.P.A. 23363 of 2025

Iliyash Sekh
-Vs-
Assistant Commissioner of CGST and C. EX, Malda Division & Ors.

Mr. Sandip Choraria,
Mr. Akash Chakraborty,
Mr. Rishav Manna.
...for the petitioner.
Mr. Uday Sankar Bhattacharya,
Mr. Tapan Bhanja.
...for the CGST Authority.
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal
...for the State.

1. Affidavit of service filed on behalf of the petitioner be kept with the record.

2. This writ petition is directed against an order dated 25th September, 2024 passed under Section 107 of the CGST Act, 2017/WBGST Act, 2017 (hereafter 'the said Act of 2017') whereby the petitioner's appeal against an adjudication order dated December 31, 2023 passed under Section 73 of the said Act of 2017 has been dismissed by confirming the said adjudication order.

3. The appellate order has held against the petitioner on the ground that the Appellate Authority did not find any reason for there being a *"difference in GSTR-1 and 3B recorded in GSTR-9C"*. The Appellate

Authority has also drawn adverse presumption against the petitioner on the ground that despite opportunity being granted to submit additional documents namely certificate of Chartered Accountant with UDIN, GSTR-9 and GSTR-9C the petitioner has not produced the same.

4. Mr. Choraria, learned Advocate appearing for the petitioner submits that the order impugned is clearly bad in law. It is submitted that the petitioner had rightly filed its statement of outward supplies in Form GSTR-1 for the month of February (Financial Year 2017-18) but there was a mistake in statement of outward supplies of goods and services filed in Form GSTR-1 for the month of March (Financial Year 2017-18). He submits that the said mistake was corrected while filing the return in Form GSTR-3B for the month of March (Financial Year 2017-18) as well as while filing the annual return in Form GSTR-9 for the said Financial Year.

5. As regards the certificate of the Chartered Accountant, Mr. Choraria draws the attention of this Court to a copy of the certificate dated February 19, 2024 (at page 77 of the writ petition) and submits that although the same was produced before the Appellate Authority, the Appellate Authority did not take the same into consideration as the same did not have UDIN.

6. It is submitted that the petitioner has thereafter been given a fresh certificate by the Chartered Accountant with UDIN and attention of this Court is drawn to the document annexed as Annexure P-7 to the writ petition (at page 122 thereof) in such regard.

7. Mr. Choraria submits that since the writ petitioner has been issued the said certificate, subsequently, the Appellate Authority must be directed to revisit the matter and take a fresh decision upon remand. It is further submitted that the Appellate Authority could not have found fault with the petitioner for not submitting GSTR-9 before the Appellate Authority inasmuch as the same is already available on the relevant portal. It is submitted that the petitioner could not be penalized for not producing Form GSTR-9C since there is no requirement of filing Form GSTR-9C for the petitioner as the petitioner does not fall within the category of persons having turnover of Rs.5 crore and above. He seeks setting aside of the order impugned with a direction to take a fresh decision.

8. Mr. Bhattacharya, learned Advocate appearing for the respondent CGST Authorities submits that the order impugned does not call for any interference. It is submitted that it is evident that a proper certificate of the Chartered Accountant was not

furnished before the Appellate Authority at the time when the Appellate Authority was considering the petitioner's appeal.

9. It is further submitted that the certificate which the petitioner is now relying on has clearly been obtained after the appellate proceedings got concluded. It is then submitted that at the time when the petitioner had filed its returns, requirement of filing GSTR-9C was very much there for the petitioner as well in terms of the provisions of Rule 80(3) of the GST Rules.

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

11. Since the petitioner had not been able to file the Chartered Accountant's certificate in proper format which appears to be a significant document for arriving at a just conclusion by the Appellate Authority, therefore the order passed by the Appellate Authority cannot be faulted on that ground.

12. However since it is the petitioner's case that the petitioner is now in possession of a proper certificate from the Chartered Accountant and that the petitioner can justify the difference in GSTR-1 and GSTR-3B and also that the petitioner had cured the mistake that occurred in filing Form GSTR-1 for the month of March (Financial Year 2017-18) while filing

the annual return as well the monthly return for the month of March for the same Financial Year, this Court is of the view that the petitioner should be given a post decisional hearing by the Appellate Authority.

13. In such view of the matter, liberty is granted to the petitioner to approach the Appellate Authority with all relevant documents including the certificate of the Chartered Accountant within a period of two weeks from date. If the petitioner approaches the Appellate Authority in terms of this order, the Appellate Authority shall reconsider the petitioner's case in the light of the documents produced and submissions made by the petitioner in accordance with law.

14. The appellate order impugned dated September 25, 2024 shall be kept in abeyance for a period of eight weeks from date. The Appellate Authority shall conclude the proceedings and within the aforesaid period upon considering the documents submitted by the petitioner and the submissions made by him, in accordance with law, as aforesaid.

15. If the Appellate Authority finds that the petitioner has been able to make out a case for interference with the adjudication order, the Appellate Authority shall pass appropriate orders and in such case the Appellate Order impugned herein dated

September 25, 2024 shall cease to have any effect and shall be treated as having been set aside.

16. However, if the Appellate Authority does not find any merit in the petitioner's case, the Appellate Authority shall give reasons for not accepting the petitioner's case and in such case, the appellate order impugned herein shall remain intact. The reasons given by the Appellate Authority for not agreeing with the petitioner or for not accepting his case shall in such a situation also be treated to be a part of the original appellate order.

17. It is clarified that this Court has not gone into the merits of the petitioner's case and all points are left open to be urged by the petitioner before the Appellate Authority and to be decided by the Appellate Authority in accordance with law.

18. As affidavits have not been directed to be exchanged, the allegations made in this writ petition shall be deemed not to have been admitted by the respondents.

19. With the above observations, WPA 23363 of 2025 stands disposed of. No costs.

20. 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.)