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AKG

Ct. 237

WPA 58 of 2026

Subrata Ghosh

Vs.

Assistant Commissioner of Revenue, Berhampore Charge & Ors.

Ms. Sanjana Jha,
Mr. Souradeep Majumdar,
Ms. Debagni Gupta

…for the Petitioner

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

…for the State

The original adjudication order dated February 20, 2023, passed under Section 73(3) of the West Bengal Goods and Services Tax Act, 2017, as well as the order of the appellate authority dated June 24, 2024, cannot be sustained for distinct and independent reasons.

It appears that a show-cause notice dated June 13, 2023, was issued to the petitioner under Section 73(1) of the said Act, alleging short payment of tax, including tax not paid, short paid, and erroneous refund of input tax credit. The adjudicating authority fixed February 13, 2023, as the date for filing a reply as well as for personal hearing. However, the petitioner failed to appear on the said date. Thereafter, the adjudicating authority proceeded to pass the final order of adjudication on February 22, 2023. It does not appear from the record that any further date of hearing was fixed subsequent to February 13, 2023.

In my considered view, the learned advocate appearing for the petitioner has rightly contended that the mandatory minimum time gap of 90 days, as prescribed under Section

73(2) of the Act, was not adhered to by the adjudicating authority. In the present case, the interval between the issuance of the show-cause notice and the adjudication order was only 40 days, which falls significantly short of the statutory requirement of 90 days.

The learned advocate for the petitioner has also rightly relied upon the judgment of the Division Bench of the Bombay High Court, Nagpur Bench, dated January 17, 2026, rendered in Writ Petition No. 7943 of 2025 (A.M. Marketplaces Pvt. Ltd. vs. Union of India & Ors.).

It further appears that the petitioner preferred an appeal under Section 107 of the Act against the adjudication order dated February 22, 2023. Subsequently, the appellate authority issued a notice dated May 31, 2024, proposing enhancement of the tax liability and directing the petitioner to file a reply by June 7, 2024. The petitioner sought an adjournment of seven days. While the appellate authority acceded to the request for adjournment, it fixed June 14, 2024, as the next date of hearing. The petitioner, however, failed to appear on the said date. Consequently, the appellate authority proceeded to pass the final appellate order on June 24, 2024, enhancing the tax demand from Rs. 29,85,020/- to Rs. 1,36,84,345.50/-.

The learned advocate for the petitioner has correctly contended that the show-cause notice dated May 31, 2024, issued by the appellate authority, is barred by limitation. It is undisputed that the relevant financial year in question is 2017–2018. Even taking into account the extension granted by Notification No. 09/2023 dated March 31, 2023, issued by the Department of Revenue, Ministry of Finance, the last permissible date for issuance of such notice would have been December 31, 2023. This is because the powers of the appellate authority are also circumscribed by the limitation period prescribed under the second proviso to Section 107(11) of the Act.

On the other hand, the learned advocate appearing for the State has argued that the petitioner did not seek any adjournment before the adjudicating authority and, therefore, the authority was justified in proceeding ex parte to determine the tax liability.

With regard to the appellate order dated June 24, 2024, it has been submitted on behalf of the State that the petitioner cannot simultaneously challenge and rely upon the notification dated March 31, 2023.

This Court is of the view that, although the petitioner has challenged the said notification, such challenge does not preclude reliance upon it in the present writ proceedings. In any event, even if the extended limitation period under the said notification is applied, the show-cause notice dated May 31, 2024, remains time-barred.

In light of the foregoing discussion, this Court holds that the show-cause notice dated May 31, 2024, issued by the appellate authority, is barred by limitation.

Accordingly, in the factual backdrop of the present case, both the adjudication order dated February 22, 2023, and the appellate order dated June 24, 2024, are liable to be set aside, and are hereby set aside.

The matter is remanded to the adjudicating authority for fresh consideration of the show-cause notice dated June 13, 2023, in accordance with law.

The amount deposited by the petitioner in connection with the appeal shall be refunded within two weeks from the date of communication of this order.

Accordingly, **WPA 58 of 2026** stands allowed.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)