Form No. J(2)
Item No. DL/5
ARPAN – A.R. (CT)

IN THE HIGH COURT AT CALCUTTA

In the Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO. 105 OF 2026

M/S SHIBA CONSTRUCTION & ANOTHER

Vs.

SPECIAL COMMISSIONER OF REVENUE & OTHERS

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioners	:	Mr. Bikramaditya Ghosh, Adv. Mr. Mayank Bhandari, Adv. Mr. Ved Rai, Adv. Mr. Vivek Saha, Adv. Mr. Binayak Bandhopadhyay, Adv.
For the State	:	Mr. Momenur Rahman, Adv.
For the Respondent No.4	:	Mr. Ratan Banik, Adv. Mr. Bishwa Raj Agarwal, Adv.
Hearing concluded on	:	16.02.2026
Judgment On	:	16.02.2026

SAUGATA BHATTACHARYYA, J.:

1. Affidavit-of-service filed on behalf of the petitioners is taken on record.

2. Mr. Bikramaditya Ghosh, learned advocate representing the petitioners submits that issuance of impugned notice dated 15th December, 2025 by the Charge Officer & Joint Commissioner, State Tax (GST) & Commercial Taxes, Jalpaiguri Charge is based on wrong premise as petitioners being involved in real estate business, have not been properly assessed by the concerned authority for payment of State GST and Central GST.

3. It is also contended that in respect of affordable residential apartments, one per cent GST needs to be fixed without ITC on total consideration whereas in respect of construction of residential apartments other than affordable residential apartments, five per cent GST without ITC on total consideration is the applicable rate for assessment of GST liability of the assessee but same was not taken into consideration while issuing impugned notice dated 15th December, 2025 to the petitioners.

4. Reliance is placed on connotation of 'affordable residential apartment' and it is submitted that threshold consideration of residential apartment other than affordable residential apartment is forty-five lakhs or above, which was not taken into consideration by the concerned State authority while making assessment. Based on aforesaid issues, it is further submitted on behalf of the petitioners that the calculation which emanates from the impugned notice dated 15th December, 2025 needs to be revisited.

5. Mr. Momenur Rahman, learned advocate representing the State GST authority has submitted that the writ petition is premature since State GST liability has not been fixed finally and no adjudication has taken place; impugned notice dated 15th December, 2025 grants opportunity to the petitioner to make deliberation before the appropriate authority prior to final adjudication of the issue.

6. Central GST authority is also represented by learned advocate who supports the contention made on behalf of the State GST authority.

7. Considering the submissions made on behalf of the respective parties and taking note of the notice dated 15th December, 2025 issued by the Charge Officer & Joint Commissioner, State Tax (GST) & Commercial Taxes, Jalpaiguri Charge, it appears final adjudication has not been made; said notice dated 15th December, 2025 grants opportunity to the petitioner to respond within seven working days from the date of receipt of said notice.

8. Since the impugned document dated 15th December, 2025 is a mere notice, Court finds that it is not the correct time to examine whether assessment of GST liability of the petitioner has been properly made or not.

9. As it is submitted by the learned advocate representing the petitioner that time to respond to the impugned notice dated 15th December, 2025 was extended right up to 18th January, 2026, such time further stands

extended by fortnight from date within which petitioner shall be at liberty to give reply to the notice dated 15th December, 2025.

10. Granting aforesaid opportunity to the petitioner to respond to the notice dated 15th December, 2025, concerned State GST authority shall decide the same, in accordance with law, following necessary procedure.

11. With the aforesaid observations and directions, writ petition stands disposed of.

12. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)