

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

WPA 1952 of 2026

Harphool Chowdhury @ Harphool Choudhary

Versus
The State of West Bengal & anr.

Mr. Himangshu Kr. Ray
Mr. Subhasis Poddar
Mr. Abhilash Mittal
Mrs. Hiqa Naz Pradhan

... For the petitioner.

Mr. Kunaljit Bhattacharjee, Ld.AGP
Ms. Radhika Agarwal

... For State.

Mr. Prasanta Joarder

.... For the SBI

1. The affidavit-of-service filed in Court today is taken on record.
2. Challenging the order passed under Section 73 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) dated 14th December, 2023 for the tax period of July 2017 to March, 2018, the instant writ petition has been filed.
3. Mr. Roy, learned advocate representing the petitioner by drawing attention to this Court to the show-cause notice issued in form DRC 01 dated 31st August, 2023 would submit that the petitioner was not afforded with an opportunity of hearing though an adverse order was

contemplated against the petitioner at the show-cause stage. According to him, the order passed by the respondents stand vitiated on the ground of non-compliance of Section 75 (4) of the said Act.

4. The State respondents and the bank are represented.
5. Having heard the learned advocates appearing for the respective parties, I find that the Scheme of the said Act, inter alia, provides for an opportunity to the person chargeable with tax and penalty to pray for any opportunity of hearing or where an adverse decision is contemplated against such person, to be entitled with an opportunity of hearing. In the instant case, none has disputed the fact that the petitioner was not afforded with any opportunity of hearing though the show-cause itself contemplated of an adverse order being passed. In the peculiar facts, I am of the view that the impugned order dated 14th December, 2023 cannot be sustained. Further, noting that the entire demand has already been realized, in my view, it shall only be prudent to remand the matter back to the proper officer and to permit the petitioner to file a response to the show-cause. If such response is filed within a period of two weeks from date or if, no such response is filed, the proper officer having regard to the observations made herein, in accordance with Section 75(4) of the said Act, shall decide on the same after giving an opportunity of hearing to the petitioner in accordance with law by passing a reasoned order.

6. It is made clear if, on the basis of the decision to be taken by the proper officer it transpires that any additional amount has been released, the said amount should be reversed. Thus, the demand already realized shall be subject to the result of the proceeding before the proper officer.
7. As a sequel thereto, the order of attachment issued by the respondents also stands quashed.
8. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)