

Item No.8
09.09.2026
Court. No. 9
(Saswata)

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION
WPA 464 of 2026*

Raj Kumar Borthakur
Vs.
Joint Commissioner of Revenue, Cooch Behar Charge & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Parmita Chowdhury
Ms. Nikita Kundu
Ms. Neha Lama
Ms. Khusi Kundu

...For the petitioner

Mr. Jagriti Mishra, Ld. AAAG
Ms. Esha Acharya

...For the State

1. At the very outset it may be recorded that though the State is not represented at the time of call, however, since Mr. Jagriti Mishra, learned AAAG is present in Court, I direct him to appear in the matter along with Ms. Esha Acharya, learned advocate. Let their appointments be regularized.

2. The present writ petition has been filed challenging the order dated 28th December 2023 passed under Section 73 of the WBGST /CGST Act, 2107 (hereinafter referred to as the said Act) in respect of the tax period from April 2017 to March 20-18.

3. Mr. Lakhotia, learned advocate appearing for the petitioner submits that though the show cause cum demand notice dated 29th September 2023 was restricted to Rs.1,13,55,828/-, the proper office while making the determination had enhanced the same to Rs.2,25,47,046/-. According to him, the aforesaid is in violation of the provisions of Section 75(7) of the said Act.

4. Having heard the learned advocates appearing for the respective parties, I find that the petitioner has an alternative remedy, however, time to file the appeal has expired long back. The explanation provided is also not sufficient. However, in the peculiar facts, and on the basis of the petitioner's undertaking, to pay 10 per cent of the tax in dispute, in the form of an email filed in Court by Mr. Lakhotia which is taken on record, the writ petition is taken up for consideration.

5. Since this Court finds that in the instant case an order has been passed determining a sum of Rs.1,03,23,480/- + 1,11,91,218/- + 10,32,348 aggregating to Rs. 2,25,47,046/- as tax, interest and penalty respectively and since, the total amount of tax, interest and penalty demanded in the order cannot be in excess of the amount specified in the show cause cum demand notice and no demand can be confirmed on the ground other than the grounds specified in the notice to show cause, in my view the above order dated 28th December 2023 should be treated as a show cause notice for the petitioner to respond to the same within a period of eight weeks from date. The proceeding is accordingly remanded to the proper officer.

6. The proper officer shall also be at liberty to provide for a supplementary show cause, provided the same is filed within a period of four weeks from date. Accordingly, the proper officer is directed to hear out and dispose of the proceedings in accordance with law after giving an opportunity of hearing to the petitioner.

7. As a sequel thereto, the order dated 28th December 2023 is set aside on the expressed undertaking as recorded above that the petitioner shall deposit by way of form GST DRC – 03, a sum equivalent to 10 per cent of the tax in dispute being

Rs.10,32,342/- with the respondents within two weeks from date.

8. It is made clear that if the above direction for deposit is not complied with by the petitioner, the petitioner shall not be entitled to the benefit of this order and the writ petition shall stand automatically dismissed without further reference to this Court and in such event, the respondents shall be at liberty to enforce this order in accordance with law.

9. The writ petition is accordingly disposed of.

10. All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(RAJA BASU CHOWDHURY, J.)