

Form No. J.(2)
Item No.2

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 21.01.2025
DELIVERED ON: 21.01.2025

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 2291 of 2024
With**

IA No. CAN 1 of 2024

**M/s Jyoti Tar Products Private Limited & Anr.
Versus**

The Deputy Commissioner, State Tax, Shibpur Charge, WBGST & Ors.

Appearance:-

**Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan**

.....For the Appellants

**Mr. A. Ray, Ld. G.P.
Md. T. M. Siddique, Sr. Adv.
Mr. N. Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal**

.....For the State

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the petitioners is directed against an order dated 13th December, 2024 in W.P.A. No. 22106 of 2024. The petitioners had filed the writ petition challenging a show-cause notice issued under Section 74(1) of the CGST Act, 2017 and W.B.G.S.T. Act, 2017 read with Rule 142(1)(a) of the Rules for the financial year 2023-24.
2. The learned Single Bench opined that the writ petition is not maintainable against the show-cause notice and in support of such conclusion, several decisions were referred to.

3. It is settled legal position that if the authority issuing the show-cause notice does not suffer from the vice of lack of jurisdiction, the Court seldom interferes in a show-cause notice. However, the case on hand is peculiar on facts, which has convinced us to grant certain reliefs to the appellants/assessee.
4. Prior to issuance of the show-cause notice, an intimation of tax ascertained as payable under Section 74(5) dated 10th July, 2024 was issued to the appellants. In the said intimation, certain particulars were given and it was stated that the appellants have claimed input tax credit against the alleged inward supply of goods from non-existing entities, whose registrations have been cancelled.
5. The intimation has advised the appellants to pay the tax ascertained, failing which the appellants were informed that show-cause notice will be issued under Section 73(1)/74(1).
6. It is not in dispute that the appellants have submitted a detailed explanation and also enclosed certain documents in support of their contention and relied upon various decisions. Thus, when the authority has thought fit to exercise its powers under Section 74(5), he is enjoined upon a duty to consider the reply before it takes a decision to issue a show-cause notice under Section 74(1) of the Act. However, in the instant case, we find that the show-cause notice dated 8th August, 2024 is a replica of the intimation given earlier and all that the assessing officer has said is that the reply furnished by the appellants in response to the intimation is not found to be satisfactory and hence, not acceptable. The remaining portion of the show-cause notice has been copied from the earlier intimation and the show-cause notice does not deal with any of the contentions, which were raised by the appellants in their reply to the intimation dated 18th July, 2024.
7. Therefore, we are of the view that the authority should consider the reply dated 18th July, 2024 to the intimation issued earlier, deal with those issues and then

proceed to issue a show-cause notice. Only for such reason, we are inclined to interfere in the matter.

8. Accordingly, the appeal is allowed and the order passed in the writ petition is set aside and consequently, the show-cause notice issued under Section 74(1) of the Act dated 8th August, 2024 is set aside and the matter is remanded back to the assessing authority to consider the reply dated 18th July, 2024 and if it still finds it to be not satisfactory, it will be well-open to the authority to proceed in accordance with law.
9. In the light of the above order, any observation made by the learned Single Bench touching upon the merits of the matter stands vacated.
10. The certified copy of the impugned order shall be filed during the course of the day.
11. No costs.
12. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pallab/KS AR(Ct.)

