

14.01.2026

Sl. 15
Ct. 551
(Samar)

WPA 6227 of 2025

Lakshmi Narayan Shah
Vs.
The State of West Bengal & ors.

Mr. Himangshu Kumar Ray,
Mr. Abirlal Chakraborty,
Mr. Subhasis Podder,
Mr. Amit Saha,
Mr. Gaurav Chakraborty,
Mr. Animitra Roy,
Mr. Anish Mondal,

....for the petitioner.

Mr. Tanoy Chakraborty,
Ms. Sumita Shaw,
Mr. Saptak Sanyal,

....for the State.

1. This writ petition assails an order dated December 19, 2024 passed by the appellate Authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 (hereafter the said Act of 2017) whereby the petitioner's appeal against an adjudication order dated September 8, 2023 passed under Section 73 of the said Act of 2017 has been disposed of upon modifying the said adjudication order.
2. The facts of the case in brief are as follows:
 - a) The petitioner was issued a notice to show cause dated May 17, 2023 under Section 73 of the said Act of 2017 whereby the petitioner was called upon to explain certain discrepancies in the petitioners returns i.e. GSTR-1, GSTR-2A, GSTR-9

and GSTR-9C for the period July, 2017 to March, 2018.

b) The petitioner could not reply to the said notice to show cause inasmuch as the petitioner did not have knowledge of the show cause notice since the same had been uploaded on the GST e-portal under the “Additional Notices and Orders” tab.

c) The show cause notice is non-speaking, however the intimation notices which preceded the show cause indicate that the petitioner was sought to be foisted with tax liability on three counts (a) tax short paid on outward supply (b) tax short paid on inward supply (RCM) and (c) ITC Found reversible.

d) Since the notice to show cause went unreplied, the adjudicating authority passed the adjudication order on September 8, 2023, thereby raising a demand against the petitioner on the basis of the grounds mentioned in the notice to show cause.

e) The petitioner carried the adjudication order in appeal before the appellate authority.

f) Before the appellate authority, the petitioner admitted the first two grounds of the show cause notice. As regards the third ground pertaining to reversal of ITC, the appellate authority nullified the demand.

g) The appellate authority, however, did not stop at that and went a step ahead and imposed further tax on the petitioner on the ground that the petitioner had claimed excess zero rated supply to the tune of Rs. 27,16,811/-. To be precise the appellate authority held as follows:

*“Consequently, it appears on the contrary that the RTP has claimed as ‘excess’ zero-rated supply by Rs. 27,16,811/- [Rs. 2,22,74,656/- minus Rs. 1,95,57,845/-] which is to be added to the Turnover of Taxable Supply and taxed in the 18%[9%+9%] category as the case apparent from the nature of goods supplied. Thus, further, Tax ‘short paid’ on Outward Supply is determined at Rs. 2,44,513/- each of CGST & SGST, **and this ought to be** added to the admitted area of Tax payability of Rs. 39,884.90 each of CGST & SGST and Rs. 1749.75 of IGST (on RCM) as aforementioned)”.*

h) The petitioner thereafter filed an application for rectification before the appellate authority on December 30, 2024, thereby seeking rectification of the said appellate order. The said rectification application was also dismissed.

i) Since the aforesaid observation and conclusion have enhanced the petitioner’s tax burden, therefore the petitioner has approached this court by way of the present writ petition.

3. Mr. Ray, learned advocate appearing for the petitioner submits that the ground on which the

petitioner's turnover of taxable supply has been increased was never put to the petitioner and as such the petitioner had no opportunity to meet and rebut the same. It is submitted that in any case, the observation of the appellate authority is factually incorrect inasmuch as the appellate authority has taken the value of the petitioners zero rated supply to be Rs. 2,22,74,656/- while the actual value of zero rated supply made by the petitioner was Rs. 1,95,57,845/-.

4. It is submitted by Mr. Ray that the petitioner had earlier committed a mistake by incorporating the figure Rs. 2,22,74,756/- while filing its return in form GSTR-3B but the petitioner had subsequently rectified the error while filing its return in form GSTR-9 and GSTR-9C.
5. Mr. Ray, learned advocate appearing for the petitioner invites the attention of the court to the provision of Section 107(11) of the said Act of 2017 and submits that the appellate authority was obliged to give the petitioner an opportunity of meeting and rebutting the appellate authority's contention if the appellate authority was contemplating enhancement of tax imposition on the petitioner.
6. In support of his submission, Mr. Ray has relied on a judgment passed by Hon'ble Division Bench of

this Court in the case of **Hriday Kumar Das Vs. State of West Bengal** reported at **[2024] 167 taxmann.com 465 (Calcutta)**.

7. Mr. Chakraborty, learned advocate appearing for the respondent CGST Authority submits that the order impugned has been passed by the appellate authority upon due in application of mind. He seeks to support the order on the basis of the material already on record.
8. Heard the learned advocates appearing for the respective parties and considered the material on record.
9. It is clear from the adjudication order as well as the intimation notices which form the basis of the show case notice that the petitioner had been questioned on three grounds i.e. (a) tax short paid on outward supplies; (b) tax should paid on inward supplies (RCM) and (c) ITC found reversible.
10. The issue of turnover of taxable supply of the petitioner was not before the adjudicating authority and consequently it was not there before the appellate authority as well, since what was impugned before the appellate authority was the adjudication order only. The adjudication order does not even hint at the said issue.
11. The said issue has still been considered by the appellate authority and the petitioner's tax burden

has been enhanced on the basis of the decision of the appellate authority on such issue. In such a case, the provisions of second proviso to section 107(11) of the said Act of 2017 definitely get attracted. The Hon'ble Division Bench of this Court has in the case of **Hriday Kumar Das** (supra) interfered with an appellate order impugned in that case on the ground of non-adherence to the procedure mentioned in section 107(11) of the said Act of 2017. Similarly, the appellate order dated December 19, 2024 impugned herein also falls foul of the mandate of the second proviso to section 107(11) of the said Act of 2017 and calls for interference.

12. Furthermore, it also appears that the appellate authority has not applied its mind and picked up a figure mentioned in Form GSTR-3B treating the same to be higher of the figures mentioned in Form "GSTR1/3B/9" without considering the petitioner's contention that the said figure was corrected by the petitioners in Forms GSTR-9 and GSTR-9C. The petitioner's contention on such score was required to be noticed. In such view of the matter too, the appellate authority is required to reconsider the aspect upon giving the petitioner an opportunity of being heard.

13. For all the reasons aforesaid, the observations and conclusion of the appellate authority in the order dated December 19, 2024, only to the extent the same hold the petitioner liable for tax and other consequences flowing therefrom, on the ground of addition to the petitioner's turnover of taxable supply and of taxing the same "*in the 18% [9%+9%] category*", is set aside.
14. The matter is remanded to the file of the appellate authority to the limited extent only for reconsideration of the aforesaid aspect inasmuch as of the total three grounds raised at the adjudication stage, two grounds stood admitted by the petitioner and one was annulled by the appellate authority.
15. Since, the appellate order has been set aside to the extent the same had increased turnover of the taxable supply of the petitioner and had imposed tax thereon as aforesaid, therefore the order rejecting of the petitioner's application for rectification (which had been filed for the same purpose) would also stand set aside.
16. The petitioner shall have liberty to file additional reply dealing with the appellate authority's contention as regards increasing the petitioner's turnover of taxable supply. The application for rectification of the petitioner shall also be considered by the appellate authority along

with the petitioner's additional reply to the contention of the appellate authority as regards the increase in petitioner's turnover of taxable supply.

17. It is clarified that this Court has not gone into the merits of the petitioner's case and the appellate authority shall decide the matter independently, in accordance with law.

18. WPA 6227 of 2025 stands disposed of with the above observations. There shall be no order as to costs.

19. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)