

28.01.2026
Court No.551
DL/Item No.-21
[Milan]

WPA 9722 of 2025

**Shine Pharmaceuticals Ltd.
versus
Joint Commissioner of Revenue, Large Tax Payer
Unit & Ors.**

Mr. Sandip Choraria,
Mr. Rishav Manna,
Mr. Akash Chakraborty

....for the Petitioner

Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal

....for the State

1. Affidavit of service filed in Court today is taken on record.
2. This writ petition is directed against an order dated 28th March, 2025 passed by the Appellate Authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 (hereinafter referred to as, “the said Act of 2017”) whereby the petitioner’s appeal against an order dated 16th January, 2024 passed by the proper officer under Section 73 of the said Act of 2017 has been disposed of by modifying the adjudication order.
3. The petitioner had been issued a show cause notice under Section 73 of the said Act of 2017 as to why should the petitioner not be liable to pay tax, inter alia, on the grounds of excess payment of Input Tax Credit (in short, “ITC”), tax on

account of excess payment of ITC and ITC found reversible and short payment of tax on outward supply. The petitioner did not reply to the said show cause notice.

4. The proper officer proceeded to pass an order under Section 73 of the said Act of 2017 thereby holding the petitioner liable to pay tax on the three counts indicated in the notice to show cause.
5. The petitioner carried out the adjudication order in appeal before the Appellate Authority. The Appellate Authority interfered with the adjudication order, insofar as the issues as regards the short payment of tax on outward supply and excess payment of ITC were concerned, however, the Appellate Authority refused to interfere with the adjudication order on the issue pertaining to reversal of ITC.
6. Mr. Choraria, learned advocate appearing for the petitioner submits that upon scrutiny of the petitioner's return, it would reveal that the petitioner was liable to reverse the ITC to the tune of Rs.1,74,40,594.33/- on account of Credit Notes and a sum of Rs.4997.41/- on account of discrepancy in place of supply and that the petitioner was thus liable to reverse ITC to the tune of Rs.1,74,45,591.74/-.

7. He has taken this Court through the return filed in Form GSTR 3B to indicate that the total IGST liability declared by the petitioner is to the tune of Rs.1,77,40,264.89/-. It is submitted that if the liability towards IGST declared in the return Form GSTR – 9 is deducted therefrom, the actual ITC reversed by the petitioner would be to the tune of Rs.1,76,09,629.81/-.
8. Mr. Choraria further submits that in terms of the data available upon scrutiny of the return, it would be evident that the ITC which is actually reversible would be only to the tune of Rs.1,74,45,591.74/-, meaning thereby that excess ITC to the tune of Rs.1,64,038.07/- has been reversed in Form GSTR 3B.
9. He has also taken the Court through the return filed in Form GSTR-9 and submitted that the total IGST liability declared in such Form is Rs.1,78,59,449.00/-, the actual ITC reversed is Rs.1,77,28,831.92/- and excess ITC reversed is Rs.2,83,222.18/-.
10. It is submitted by Mr. Choraria, learned advocate appearing for the petitioner that it would be evident from aforesaid figures that ITC which was supposed to be reversed on account of credit notes has already been reversed by the petitioner and no more ITC is reversible by the petitioner.

11. It is submitted that despite these facts being brought to the notice before the Appellate Authority, the Appellate Authority did not take into consideration the said facts and passed the order impugned holding the petitioner liable for reversal of ITC once again.
12. Mr. Chakraborty, learned advocate assisted by Mr. Sanyal, learned advocate appearing for the State GST authorities submits that the facts which have now been placed before this Court were not placed before the Appellate Authority.
13. It is further submitted that since the Appellate Authority had not been apprised of the actual factual situation properly and since the show cause notice had gone un-replied, thereby resulting in an ex parte adjudication order, the appellate order which has been passed by the Appellate Authority should not be interfered with.
14. Heard learned counsels for the respective parties and considered the material on record.
15. It is not in dispute that the facts and figures that have been indicated to the Court are all available on the relevant portal of GST authorities in the relevant return Forms i.e. GSTR-1, GSTR-9 and GSTR 3B. In such situation, the Appellate Authority ought to have considered such facts and figures as available on the portal itself and then

proceeded to answer the issues that were raised before it.

16. There is no discussion as regards the aforesaid facts and figures in the order impugned and there is nothing to indicate why the amounts mentioned in the said return Forms should not be considered. It is noticed that Ground no.6 taken by the petitioner in the petitioner's appeal and Ground II taken by the petitioner in its additional submission before the Appellate Authority which clearly indicate the same argument that has been made before this Court (albeit summarily) have been extracted in the appellate order, yet the same have not been dealt with. Not having done that, there is clear abdication of duty on the part of the Appellate Authority.
17. On such score, alone, the appellate order dated 28th March, 2025 deserves to be set aside and is accordingly set aside.
18. It is noticed that the Adjudicating Authority/Proper Officer has also not taken into consideration the said records i.e. Form GSTR 3B and GSTR-9, which were available with it while passing the adjudication order. For such reason, the adjudication order dated 16th January, 2024 also stands set aside.

19. The matter is remanded to the Adjudicating Authority/Proper Officer for fresh decision on merits. Needless to mention that the petitioner shall be afforded an opportunity of hearing before passing any adjudication order.
20. As requested, the petitioner shall be entitled to file a written note or a reply before the Proper Officer within a period of two weeks from date. The Adjudicating Officer/Proper Officer shall pass appropriate order upon affording an opportunity of hearing to the petitioner and upon considering the written note or reply, filed by the petitioner, if any.
21. It is clarified that the entire period from the date of the appellate order i.e. 28th March, 2025 till the date of the present order passed in this writ petition shall stand excluded and from the duration of adjudication of proceedings. It is further clarified that the petitioner shall not be entitled to raise any objection against the adjudication proceedings, conducted and concluded in terms of this order, on the ground of limitation, unless the said point was available to the petitioner at the time when the show cause notice was issued.

22. It is submitted by Mr. Choraria that recovery proceedings have also been initiated during the pendency of the writ petition.
23. It is needless to mention that since both the adjudication order as well as the appellate order impugned herein have been set aside, no recovery proceedings on the strength of the said orders can be continued any further.
24. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Om Narayan Rai, J.)

