

OD-3

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/48/2026

PAMPER OVENFRESH FOODS PRIVATE LIMITED
VS
ADDITIONAL COMMISSIONER CENTRAL TAX KOLKATA II
AUDIT COMMISSIONER RATE AND ORS

BEFORE:

The Hon'ble JUSTICE SMITA DAS DE

Date : May 7, 2026.

Appearance:

Mr. Sanjay Bhaumik, Adv.
Mr. Shoumya Kejriwal, Adv.
Mr. Debarghya Banerjee, Adv.
...for the petitioner

Mr. Vipul Kundalia, Sr. Adv.
Mr. Anurag Roy, Adv.
Mr. Anindya Kanan, Adv.
Mr. Dhirodatto Chaudhuri, Adv.
...for the respondent CGST Authority

The Court: The petitioner, in the instant case, challenges, *inter alia*, the validity and legality of the notice dated 5th December, 2025, issued by respondent no.1 under Section 74 of the CGST Act (hereinafter referred to as the said Act) and all other connected and consequential proceedings.

Main grievance of the petitioner is that respondent no.1 does not have any jurisdiction to issue a notice under Section 74(1) of the said Act as the essential ingredients for invoking the said provision are not satisfied in the present case. It is further submitted that the respondent no.1 failed to consider that the petitioner correctly classified extrusion 'fried snacks and pellet fried snacks' under the relevant sub-heading 2106 90 99 read with serial

no.46 of the Schedule II of the Rate Notification, and therefore Section 74 is not applicable. A show-cause notice issued by the respondent no.1 under Section 73 of the said Act proposing reclassification of the product in question is also stated to be without jurisdiction.

Learned counsel appearing for the petitioner draws the attention of this Court to Chapter 21 of Miscellaneous Edible Preparation to submit that the product 'Namkeen' has all along been classified as attracting tax at the rate of 12% instead of 18%. The petitioner relies upon circulars dated 31st January, 2023 and 11th October, 2024, to demonstrate that the product 'Namkeen' has consistently been classified under the relevant subheading read with serial no.46 of Schedule II, which is the subject-matter of challenge in the present writ petition.

Learned senior counsel Mr. Vipul Kundalia, vehemently opposes the same and raises an objection to the maintainability of the writ petition. He submits that a show-cause notice can be challenged only in exceptional circumstances and, in the present case, since the petitioner despite giving an undertaking, failed to respond to the show-cause notice, the concerned authority has been compelled to issue a show-cause notice under Section 74 of the said Act.

Learned counsel draws the attention of this Court to Clause 2.5 at page 126 of the writ petition to demonstrate that the assessee, by way of a reply, dated 26th May, 2025 has been given an undertaking to furnish a detailed and proper reply, however, the same has not been duly submitted before the authority concerned by the petitioner.

In conspectus of the above, as adumbrated herein, I find that since the petitioner has challenged the circular dated 13th January, 2023, a proper and extensive hearing is required with regard to the vires of the issues involved herein. I further find that no interim order is warranted at this stage.

The respondents are directed to file an affidavit-in-opposition within two weeks after vacation; reply thereto, within a week thereafter.

List the matter on 26th June, 2026.

(SMITA DAS DE, J.)