IN THE GOODS AND SERVICES TAX APPELLATE TRIBUNAL KOLKATA BENCH

COURT NO.1

Appeal No. APL/115/KLK/2026

Partha Tribedi
Proprietor M/s Tribedi Enhterprise
C/o Partha Tribedi, Old Malda, Bachamari Govt. Colony
Malda, West Bengal-732142

…… Appellant

VERSUS

Vivek Ranjan
Assistant Commissioner
Bureau of Investigation North Bengal
Raiganj Zone, Raiganj

…… Respondent

In appearance :

For the appellant : Mr. Manish Sethia, GST Practioner.
For the respondent: Mr.Sandip Roy Chowdhury, Dy. Commissioner, SGST

CORAM :

Hon'ble Shri S.G. Chattopadhyay : Judicial Member
Hon'ble Shri Bijoy Kumar Kar : Technical Member

Final Order

Date of Hearing : 08.09.2026
Date of Order : 22.09.2026

Per S.G. Chattopadhyay (JM):

[1]. The hearing of the case has taken place through hybrid mode.

[2]. The present appeal has been filed by Shri Partha Tribedi, the proprietor of M/s Tribedi Enterprise of Old Malda, Bachamari, Malda, West Bengal under sub-Section (1) of Section 112 of the Central Goods and

Services Tax Act, 2017 (hereinafter called as CGST Act, 2017) challenging the order dated 25.07.2023 passed by the Joint Commissioner of Revenue, State Tax, Raiganj Circle, Raiganj (hereinafter called the first appellate authority).

[3]. The factual background of the case is as under :

An inspection and search was conducted by the revenue in the registered office of the taxpayer at Bachamari Govt. Colony, Old Malda in Malda District of West Bengal on 18.11.2021. The taxpayer was found engaged in wholesale of Zarda, Pan Masala, Mamy Poko Pants, Neutrella (Soya Nuggets), etc. Allegedly, the taxpayer was found maintaining the records of outward supplies of Pan Masala and Zarda on scrap papers instead of maintaining proper record. To the query of the inspecting team, the taxpayer replied that all these incriminating materials belonged to M/s Tribedi Uddoge and he had no connection with M/s Tribedi Uddoge. The revenue, apart from seizing said scrap papers, also seized electronic devices viz. pen drives from the possession of the taxpayer and based on those inputs detected tax evasion of huge amount on the part of the taxpayer. But no show cause notice was issued to the taxpayer.

[4]. Instead, the revenue issued summons to the taxpayer to appear at the office of the revenue on 02.01.2022. The taxpayer did not turn up on that date. On a later date on 29.01.2022, he appeared before the concerned officer of the revenue and submitted that illness prevented him from appearing before the adjudicating authority on 02.01.2022. The

adjudicating authority was of the view that the taxpayer could not adduce any document to defend the charge of evasion of tax. Based on the scrap papers and the data stored in the electronic devices seized from the possession of the taxpayer, the adjudicating authority determined the tax liability of the taxpayer by issuing an order in Form GST-DRC-07 on 25.03.2022 which contained the details of demand in paragraph 5 of said GST-DRC-07. The demand reads as under :-

(Amount in Rs.)

Sl.No	*Tax rate (%)*	*Turnover*	*Place of supply*	*Act*	*Tax/Cess*	*Interest*	*Penalty*	*Fee*	*Others*	*Total*
1.	*14*	*4,275,900.00*	*West Bengal*	*CGST*	*598,626.00*	*0.00*	*282,299.00*	*0.00*	*0.00*	*880,925.00*
2.	*14*	*4,275,900.00*	*West Bengal*	*SGST*	*598,626.00*	*0.00*	*282,299.00*	*0.00*	*0.00*	*880,925.00*
3.	*60*	*4,277,883.00*	*West Bengal*	*CESS*	*2,566,730.00*	*0.00*	*0.00*	*0.00*	*0.00*	*2,566,730.00*

[5]. As regards the interest, the adjudicating authority passed the following order :

> *It is also to be noted that the interest calculation is still pending along with a final scrutiny of all the records and amendments (if any) made to the stipulated demand will be communicated to the RTP via e-mail/phone and he RTP will be given proper time to represent itself.*
>
> *The DRC-07 is hereby issued with Memo No.4432 dtd.25.03.2022.*

[6]. The taxpayer challenged the order before the first appellate authority by filing an appeal under Section 107(1), CGST Act, 2017. The first appellate authority heard the appeal on merit and decided the appeal against the taxpayer by the impugned order dated 25.07.2023.

[7]. The taxpayer mainly relied on the following grounds before the first appellate authority :

i) No statutory show cause notice was served on the taxpayer which amounted to violation of the principles of natural justice.

ii) The taxpayer only deals in pan masala. He does not have any other business. Therefore, the facts contained in DRC-07 are incorrect.

Under the premises aforesaid, the taxpayer sought for dismissal of the order of the adjudicating authority.

[8] The first appellate authority by order dated 25.07.2023 dismissed the appeal of the taxpayer and upheld the order of the adjudicating authority. The first appellate authority was of the view that there was no entity in the name of Tribedi Trader or Tribedi Uddoge as contended by the taxpayer. The inspecting team conducted search and seizure in the office of the taxpayer and seized the incriminating materials viz. scrap papers, pen drives etc.

[9]. The first appellate authority dismissed the appeal and held that the taxpayer was liable to pay tax along with interest and penalty and attributed the following liability to the taxpayer :

"In view of the above facts & findings as well as nugatory grounds of appeal, I am of the unhesitant opinion that the instant appellant has, with a reason of fraud, made the suppression of outward supply of the goods of 'Zarda & Pan Masala' for ₹4256414.00 [4275900.00 (unearthed)-19486.00 (Disclosed in Return for ME-MARCH-2022)].

Hence, I take the plunge to modify the said Order of Demand in FORM-GST-DRC-07(Vide-Order Reference No.ZD190322014597D, Dated-28.03.2022) passed by the Assistant Commissioner of Revenue/Bl-North Bengal/Raiganj Zone (hereinafter referred to as the "adjudicating authority") with addition of levying of Interest as under:-

Particulars	*Central tax (@14%)*		*State/UT tax (@14%)*		*Integrated tax*		*Cess(@60%)*		*Total*	
	Disputed Amount (Rs.)	*Determined Amount(Rs.)*	*Disputed Amount (Rs.)*	*Determined Amount(Rs.)*	*Disputed Amount (Rs.)*	*Determined Amount(Rs.)*	*Disputed Amount (Rs.)*	*Determined Amount(Rs.)*	*Disputed Amount (Rs.)*	*Determined Amount(Rs.)*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*
a)Tax	*598626.00*	*598626.00*	*598626.00*	*598626.00*	*NIL*	*NIL*	*2566730.00*	*2553848.00*	*3763982.00*	*3745644.00*
b)Interest	*Determinable*	*135180.00*	*Determinable*	*135180.00*	*NIL*	*NIL*	*Determinable*	*579328.00*	*Determinable*	*849688.00*
c)Penalty @15%)	*89794.00*	*89385.00*	*89794.00*	*89385.00*	*NIL*	*NIL*	*385010.00*	*383077.00*	*564598.00*	*561847.00*

I accordingly, issue this Order u/s-107(11) of the West Bengal Goods and Services Tax Act-2017 read with corresponding sections of the Central goods and Services Tax Act-2017 along with a summary of the order in FORM-GST-APL-04 in accordance with the provisions of Rule-113(1) of the West Bengal Goods and Services Tax Rules-2017 read with corresponding rules of the Central goods and Services Tax Rules-2017 to the instant appellant RTP through GST Common Portal.

The appeal stands disposed of accordingly."

[10] We have heard Mr. Manish Sethia, Authorised Representative of the taxpayer, who has vehemently argued that any proceeding under CGST or SGST Act 2017 for recovery of demand without issuing a show cause notice is required to be dismissed. Mr. Sethia has argued that undisputedly no show cause notice was issued in this case and the point was raised before the adjudicating authority as well as before the first appellate authority. Neither the adjudicating authority nor the first appellate authority considered the issue. As a result, the taxpayer has moved this Tribunal for redress.

[11]. Mr. Sandip Roy Chowdhury, Dy. Commissioner, SGST submitted that though no SCN was issued to the taxpayer, he was given opportunity to appear before the adjudicating authority as well as the first appellate authority and after giving the tax payer full opportunity of hearing the

adjudicating authority as well as the first appellate authority gave almost concurrent views which do not call for any interference. Mr. Roy Chowdhury, Dy. Commissioner, SGST, further submitted that the adjudicating authority as well as the first appellate authority had taken into consideration all relevant aspects and decided the case on merit and as such there is no reason to interfere with the findings. Mr. Roy Chowdhury urged for dismissal of the appeal.

[12]. The sole question which arises for our consideration is whether the proceedings against the taxpayer can survive without a show cause notice (hereinafter SCN) having been issued to him.

[13]. Undisputedly, no SCN seems to have been issued in this case. In the case in hand, it would appear that the amount of tax and penalty was determined by the adjudicating authority in terms of Section 74(9) of WBGST Act, 2017). Section 74(9) of West Bengal Goods and Services Tax Act, 2017 (hereinafter called WBGST Act, 2017) mandates that the proper officer shall issue an adjudication order determining the amount of tax, interest and penalty only after considering the representation of the taxpayer. For providing the opportunity to the taxpayer to submit such representation, sub-Section (1) of Section 74 CGST Act, 2017 which is in *pari materia* with Section 74(1) of the WBGST Act, 2017, mandates that the proper officer shall have to serve notice on the person chargeable with

tax. It would be appropriate to quote Section 74(1) at this place which reads as under :

> ***Section 74. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.-***
>
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

[14]. Rule 142 of the WBGST Act is also considered relevant which reads as under :

> ***CHAPTER-XVIII DEMANDS AND RECOVERY***
>
> *Rule - 142. Notice and order for demand of amounts payable under the Ordinance.*
>
> *(1) The proper officer shall serve, along with the*
>
> *(a) notice under sub-section (1) of section 73 or sub-section (1) of section 74 or sub-section (2) of section 76, a summary thereof electronically in FORM GST DRC-01,*
>
> *(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.*

[15]. It is, therefore, crystally clear that even GST-DRC-01 and GST DRC-02 cannot substitute a statutory notice contemplated under Sections 73 & 74 of the CGST as well as WBGST Act, 2017.

[16]. In the case of **ARCELORMITTAL NIPPON STEEL INDIA LTD. Vs. ASSISTANT COMMISSIONER, (R/SPECIAL CIVIL APPLICATION NO.11043 of 2020)**, the Hon'ble High Court of Gujarat in the order dated 24.11.2021 has succinctly held that even when a show cause notice is issued, it should contain the foundational facts to enable the taxpayer to make an effective representation. We find it appropriate to refer to paragraph 7.2 and 7.6 of the said order of the Hon'ble High Court of Gujarat to understand the importance of the show cause notice in such proceedings from the right perspective, which reads as under :

> *7.2. As rightly pointed out by the petitioners, the only ground assigned for proposing the rejection of the claim for refund is the "others" with a remark that "error in adjusted total turnover." It is surely and rightly has been termed as a show cause notice which is completely vague and lacks the fundamental details which otherwise is required to be given for anyone to comprehend the same. A notice since is a foundation of any proceedings and if the same is not clear and is vague, the very edifice is extremely weak and based on such hollow foundation, when an attempt is made to raise a superstructure, the same cannot be sustained.*
>
> x x x x x x
>
> *7.6. Not only the show cause notice lacks the clarity and requisite material necessary to meet with the same, the order impugned is also in clear violation of the settled cannon of law. Lack of reasons in the show cause notices has not enabled the parties to make an effective representation and file the reply nor would the grant of personal hearing for contesting such show cause notices would sub-serve the purpose. The order of rejection also is a non-speaking order and the same had been passed without bearing in mind requirements of giving any reasons for rejection.*

[17] In the case of **Metal Forgings and another vs. Union of India and others, reported in (2003) 2 SCC 36**, the Hon'ble Supreme Court in paragraph 12 of the judgment has observed as under :

12. It is an admitted fact that a show cause notice as required in law has not been issued by the revenue. The first contention of the revenue in this regard is that since the necessary information required to be given in the show cause notice was made available to the appellants in the form of various letters and orders, issuance of such demand notice in a specified manner is not required in law. We do think that we cannot accede to this argument of the learned counsel for the revenue. Herein we may also notice that the learned Technical Member of the tribunal has rightly come to the conclusion that the various documents and orders which were sought to be treated as show cause notices by the appellate authority are inadequate to be treated as show cause notices contemplated under Rule 10 of the Rules or Section 11A of the Act. Even the Judicial Member in his order has taken almost a similar view by holding that letters either in the form of suggestion or advice or deemed notice issued prior to the finalisation of the classification cannot be taken note of as show cause notices for the recovery of demand, and we are in agreement with the said findings of the two Members of the tribunal. This is because of the fact that issuance of a show cause notice in a particular format is a mandatory requirement of law. The law requires the said notice to be issued under a specific provision of law and not as a correspondence or part of an order. The said notice must also indicate the amount demanded and call upon the assessee to show cause if he has any objection for such demand. The said notice also will have to be served on the assessee within the said period which is either 6 months or 5 years as the facts demand. Therefore, it will be futile to contend that each and every communication or order could be construed as a show cause notice. For this reason the above argument of the revenue must fail.

[18]. From the statutory scheme of the CGST Act, 2017 as well as the WBGST Act, 2017 as discussed in the preceding paragraphs and the judgments of the Hon'ble Gujarat High Court and that of the Hon'ble Supreme Court of India cited to supra, it would transpire that a communication in any other form cannot substitute the statutory show cause notice which is a mandatory requirement of law and such show cause notice must indicate the amount demanded, background facts and

all other necessary details so as to enable the taxpayer to make an effective representation against such notice.

[19]. In the present case, it would appear that the demand was created under Section 74 of the WBGST Act for evasion of tax by suppression of facts and tax was determined in terms of sub-Section (9) of Section 74 of the said Act. The Hon'ble Supreme Court in a recent judgment delivered on 25.08.2026 in the case of **M/S Tata Steel Limited vs Union of India through the Secretary, Ministry of Finance and others**, in which a demand was created under Section 74, CGST Act, 2017 has held that the foundational facts which led the assessing officer to arrive at the inference of fraud/ wilful misrepresentation/ suppression should be evident from the notice itself. In paragraph 14 of the judgment, the Hon'ble Apex Court has held as under:

> *"14. It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/willful misrepresentation/suppression. The foundational facts which led to the inference arrived at of fraud/willful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute."*

[20]. In this case, no notice at all has been issued even though tax was determined under Section 74(9) of the Act after creating demand under Section 74 which is blatantly illegal.

[21]. In this regard, we also find it appropriate to refer to the Circular No.1053/02/2017-CX dated 10.03.2017, which was issued by the GOI, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs prior to the commencement of CGST Act and WBGST Act, 2017. This Circular covers a wide area concerning show cause notice, adjudication proceedings, recovery etc. and it was stated in the circular that this master circular shall have overriding effect on the CBEC's Excise Manual of Supplementary Instructions to the extent they are in conflict. The circular dealt with the subject of show cause notice in Part-I. In this regard, paragraph 1.1 to paragraph 2.4 may be quoted from the said circular which reads as under :-

Part I : Show Cause Notice

> ***1.1 Demand:*** *Under the provisions of the Central Excise Act, 1944, demand can be issued when any duty of Central Excise has not been levied or paid or has been short-levied or short-paid or where any duty has been erroneously refunded, for any reason. The demand of duty may also arise on account of duty collected without the authority of levy or in excess of the levy but not deposited with the department in terms of Section 11D of the Central Excise Act, 1944.*
>
> ***1.2*** *Demand of duty from the assessee is made by way of issue of a Show Cause Notice (SCN in short) indicating therein charges of violations of provision of law requiring the assessee to explain as to why the duty not levied/not paid or short levied/ short paid should not be recovered from the noticee with interest and penalty, if applicable. Similarly, a show cause notice can also be issued for recovery of refund erroneously paid by the Government to the taxpayer.*
>
> ***2.1 Show Cause notice (SCN):*** *Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder. A SCN offers the*

noticee an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as audi alteram partem which means that no one should be condemned unheard.

2.2 Structure of SCN: *A SCN should ideally comprise of the following parts, though it may vary from case to case:*
a) Introduction of the case
b). Legal frame work
c). Factual statement and appreciation of evidences
d). Discussion, facts and legal frame work,
e). Discussion on Limitation
f). Calculation of duty and other amounts due
g). Statement of charges
h). Authority to adjudicate.

2.3 Introduction of the case: *This part of the SCN must contain the details of the person to whom the notice is to be issued. It must contain the name, registration number/IEC and address of the person and the manner in which the said person, has been identified in the later text of the notice. In case of issuance of SCN to many noticees, details of all such noticees should be stated separately irrespective of the fact that, the persons are closely related to each other. A very brief background as to how the present proceeding started should be discussed in the SCN. For example, a SCN may be based on audit of accounts by the internal audit or detailed scrutiny of return by the Range office or intelligence by anti-evasion etc. In this part, the gist of audit objections/observations/ intelligence and a brief modus operandi of duty evasion adopted by the alleged offender may be discussed. Further, the details of verification/investigation conducted/ carried out and the summary of the verification may also be discussed in this part.*

2.4 Legal framework: *The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice. While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.*

[22] It has been acknowledged in paragraph 2.1 in Part-I of the said Circular that SCN is the basic document for settlement of any dispute relating to tax liability and issuance of SCN is a mandatory requirement under the statute because it offers an opportunity to the taxpayer to submit

his representation before the adjudicating authority on the charges alleged in the SCN.

[23]. The statutory scheme is that the tax, penalty and interest can be demanded from the taxpayer only after serving a statutory SCN of demand and after considering his representation in response to SCN. Admittedly, no such SCN has been issued in this case. As a result, taxpayer could not know the case against him and he was thus deprived of the opportunity to make an effective representation which, in our view, vitiates the entire proceedings against the taxpayer.

[24]. Therefore, the appeal succeeds and the same is allowed. The impugned order passed by the first appellate authority is set aside.

The appeal is, thus, disposed off. Communicate the order to the parties by supplying certified copies to both for of them free of cost.

Order pronounced in open Court in presence of the authorised representatives of the parties. The Registry is directed to upload the Final Order on GSTAT Portal immediately.

S.G.Chattopadhyay
Judicial Member

Bijoy Kumar Kar
Technical Member