

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

(Through virtual mode)

WP(C) No. 1020/2026

Date of pronouncement: 11.05.2026

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M/S Ess Ess Enterprises and Electronics FF, Plot No.64, Small Industries Development Corporation (SIDCO) Electronic Complex, Old Airport Road, Budgam Jammu and Kashmir Pin Code 190007 GST No. 01ANXPN8615J2ZH through its proprietor Ms. Sameera Islam Naqshbandi.

Petitioner

Through: - Mr. Azhar ul Amin Sr. Advocate with
Mr. Noman Shafi Advocate.

Vs.

Union of India and others

...Respondent(s)

Through: - Ms.Bisma Ali Advocate vice
Mr. T.M.Shamsi DSGI.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE**

JUDGMENT

Sanjeev Kumar J

1 The petitioner, M/s Ess Ess Enterprises and Electronics, FF, Plot No. 64, Small Industries Development Corporation (SIDCO) Electronic Complex, Old Airport Road, Budgam, Jammu and Kashmir-190007, through its proprietor Ms. Sameera Islam Naqshbandi, is a proprietorship concern engaged primarily in the business of providing services in the nature of works contracts, etc., and is registered with the Goods and Services Tax authorities vide GSTIN No. 01ANXPN8615J2ZH. The petitioner feels aggrieved of a show cause notice dated 06.02.2026, a reminder dated 11.03.2026, and a demand order dated 09.04.2026 issued by the State Taxes Officer, Circle-1 Kashmir ["STO"].

2 Briefly stated, the facts pleaded in the present petition, filed under Article 226 of the Constitution of India challenging the impugned notices and order in the face of availability of an alternative remedy of appeal under Section 107 of the Central Goods and Services Tax Act, 2017 [“CGST Act”], are that in the year 2024, the Assistant Commissioner in the office of the Commissioner, GST (Audit), Commissionerate Jammu, issued a notice dated 16.01.2024 for conducting GST audit for the financial years 2017-18, 2018-19, 2019-20, 2020-21 and 2022-23. Pursuant thereto, the Assistant Commissioner conducted the audit for the aforesaid financial years, which culminated in issuance of an Audit Report under Section 65(6) of the CGST Act. The petitioner pleads that all the discrepancies pointed out in the Audit Report with regard to short payment of tax were duly met and the requisite tax liability was discharged. However, in the year 2026, the STO issued the impugned show cause notice dated 06.02.2026 purportedly under Section 73 of the Jammu and Kashmir Goods and Services Tax Act, 2017 (“J&K GST Act”) and the Rules framed thereunder. The said show cause notice pertained specifically to the financial year 2022-23. As per the show cause notice, the petitioner was granted 30 days’ time to file reply, and the date of personal hearing was fixed for 08.03.2026 at 12:00 PM.

3 The petitioner claims that she could not avail the opportunity of personal hearing as she was out of station. It is further stated that the petitioner moved a representation dated 07.03.2026 seeking extension of time and fixation of a fresh date for personal hearing. According to the petitioner, the said representation was not considered by the STO concerned. Instead, vide reminder dated 11.03.2026, the time to file reply was extended up to 21.03.2026 and the date of personal hearing was also fixed for the said date at 12:00 PM. The petitioner further pleads that 21.03.2026 was a public holiday on account of Eid-ul-Fitr and, therefore, she could not attend the personal hearing. In the absence of any reply

having been submitted by the petitioner, the respondent proceeded to pass the final order dated 09.04.2026 under Section 73 of the J&K GST Act, raising a total demand of Rs. 3,41,80,109/- on account of tax, interest, and penalty, and directed the petitioner to deposit the said amount within 90 days. It is this order dated 09.04.2026, along with the show cause notice dated 06.02.2026 and reminder dated 11.03.2026, which are called in question by the petitioner directly before this Court by invoking its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

4 The impugned order and notices have been assailed by the petitioner on multiple grounds. However, instead of going into the merits of the grounds of challenge urged by learned counsel appearing for the petitioner, we confronted the learned counsel with the question of the maintainability of the present petition in view of the availability of an equally efficacious statutory remedy of appeal provided under Section 107 of the CGST Act. Responding to the preliminary objection raised by this Court, learned counsel appearing for the petitioner submitted that availability of an alternative remedy is no bar to the maintainability of a writ petition under Article 226 of the Constitution of India, particularly when the impugned order has been passed in violation of the principles of natural justice or is wholly without jurisdiction. Elaborating his submissions, Mr. Azhar ul Amin, learned counsel appearing for the petitioner, submitted that in the instant case, the impugned demand order passed under Section 73 of the J&K GST Act has been issued in sheer violation of the rule of *audi alteram partem*. He submitted that the show cause notice dated 06.02.2026 could not be responded to by the petitioner as she was out of the Union Territory during the relevant period. He further submitted that the petitioner could not respond to the reminder dated 11.03.2026 for the reason that the date fixed for personal hearing, i.e., 21.03.2026, happened to be a public holiday on account of Eid-ul-Fitr. His further grievance was that the

petitioner's request for adjournment made vide communication dated 07.03.2026 was not considered by the respondent- authority, thereby resulting in denial of adequate opportunity of hearing and of defending his case. He further argued that once audit proceedings had already been conducted by the Assistant Commissioner under Section 65 of the CGST Act, the proper officer, i.e., the STO, was not competent to initiate fresh proceedings under Section 73 of the J&K GST Act/CGST Act. According to him, the proceedings initiated by the STO, culminating in the *ex parte* demand order dated 09.04.2026, were wholly without jurisdiction.

5 Having heard learned counsel for the petitioner and perused the material on record, we find that it is not in dispute that the impugned order dated 09.04.2026 passed by the STO is appealable under Section 107 of the CGST Act. The remedy provided under Section 107 of the said Act is not only a statutory remedy but also an effective and efficacious one.

6 The rule of alternative remedy has been explained by the Hon'ble Supreme Court as well as by this Court in numerous judgments. In **Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1**, a two-Judge Bench of the Supreme Court, after surveying the case law on the point, held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and can be exercised for enforcement of any of the fundamental rights contained in Part III of the Constitution as also for "any other purpose". Undoubtedly, the High Court has a discretion to entertain or not to entertain a writ petition. However, the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available, the High Court would ordinarily not exercise its writ jurisdiction.

7 It is equally well settled that the alternative remedy does not operate as a bar in at least three contingencies, namely: (i) where the writ petition has been filed for enforcement of any of the fundamental rights; (ii) where there is violation of the principles of natural justice; and (iii) where the order or proceedings impugned are wholly without jurisdiction or where the vires of an Act is under challenge.

8 The Hon'ble Supreme Court revisited the issue in **Radha Krishan Industries v. State of Himachal Pradesh, (2021) 6 SCC 771**, and culled out the principles governing the rule of alternative remedy in paragraphs 27.1 to 27.6 thereof, which, for facility of reference, are set out below:

“27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

(Emphasis supplied)

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with”.

9 From the settled legal position enumerated above, it is beyond any pale of discussion that where a right or liability is created by a statute which itself prescribes the remedy or procedure for enforcing such right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. The rule of exhaustion of statutory remedies is a rule of policy, convenience, and discretion (para 27.5).

10 When we examine the instant case in the light of the aforesaid settled legal position, we find that the petitioner has miserably failed to demonstrate that his case falls within any of the exceptions carved out by the judicial precedents. Too much emphasis was laid by Mr. Amin, learned counsel for the petitioner, on the contention that the impugned order dated 09.04.2026 suffers from violation of the principles of natural justice, though the same was not supported by any material placed on record.

11 Indisputably, the show cause notice was issued to the petitioner on 06.02.2026 and 30 days' time was granted to her to file her reply. The petitioner was also informed that she was entitled to a personal hearing, which was scheduled for 08.03.2026 at 12:00 PM. The time to file the reply, thus, expired on 07.03.2026. Despite having a clear period of 30 days, the petitioner failed to submit her reply. She appears to have moved a representation seeking extension of time on 07.03.2026.

12 Be that as it may, whether it is on account of the request made by the petitioner or otherwise, the STO concerned, vide its reminder dated 11.03.2026, granted further extension of time and called upon the petitioner to submit her reply by 21.03.2026. In this manner, the petitioner was granted 13 additional days to submit her reply. She was also asked to appear in person for personal hearing on 21.03.2026 at 12:00 PM. It is not the case of the petitioner that she went to attend

the personal hearing on 22.03.2026 or made any request to the STO for providing her another opportunity of personal hearing. That apart, nothing prevented the petitioner from at least submitting his reply by 21.03.2026. Viewed thus, the petitioner had sufficient time to submit his reply to the show cause notice from 06.02.2026 till 21.03.2026. She chose not to submit any reply and, therefore, cannot be said to have been denied the opportunity of hearing. The ground of violation of principles of natural justice carved out by the petitioner is, therefore, without any substance or lawful basis and hence cannot be accepted.

13 So far as the plea of lack of jurisdiction raised by the petitioner is concerned, the same is equally misconceived and not supported by law. Chapter XIII of the CGST Act deals with audit. Section 65, which provides for audit by tax authorities, reads thus:

“ 65. Audit by tax authorities:

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression “commencement of audit” shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74”.

(Underlined by us)

14 From a reading of Section 65, it clearly transpires that the Commissioner or any officer authorized by him, either by way of a general or specific order, can undertake audit of any registered person for such period, at such frequency, and in such manner as may be prescribed under the Rules.

15 In the instant case, the authorized officer undertook audit for the financial years 2017-18 to 2022-23. The petitioner was duly put on notice and was heard in the matter. During the course of audit, the authorized officer is supposed to require the registered person to furnish such information as may be necessary and render assistance for timely completion of the audit. In the process, the registered person is under an obligation to afford the authorized officer all necessary facilities to verify the books of account and other relevant documents as may be required. Sub-section (7) of Section 65 of the CGST Act is very important and deserves to be noticed in the context of the controversy raised by the petitioner. A plain reading thereof makes it abundantly clear that where an audit conducted under sub-section (1) of Section 65 results in detection of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer, i.e., the STO concerned, may initiate action under Sections 73 or 74

of the Act. It is in the backdrop of these statutory provisions, the STO initiated proceedings under Section 73 of the J&K GST Act by issuing the impugned show cause notice to the petitioner so as to afford her an adequate opportunity of being heard.

16 The contrary argument advanced by Mr. Amin, learned counsel for the petitioner, that once the audit has been conducted and the discrepancies found therein have been met, the proper officer is devoid of jurisdiction to initiate proceedings under Sections 73 or 74 of the J&K GST Act/CGST Act, is contrary to what is provided under sub-section (7) of Section 65 of the Act.

17 For all these reasons, we are of the considered opinion that the petitioner has not carved out any exception to the general rule of alternative remedy so as to persuade us to entertain this petition under Article 226 of the Constitution of India notwithstanding the availability of an equally efficacious remedy of appeal provided under Section 107 of the CGST Act/J&K GST Act.

18 In view of the foregoing, we find this petition not maintainable and the same is, accordingly, dismissed. The petitioner shall be at liberty to challenge the impugned order/notices by availing the statutory remedy of appeal provided under Section 107 of the CGST/J&K GST Act. We, however, clarify that whatever observations we have made in this order shall be restricted to this order only and shall not be construed as final decision on the contentious issues that may be raised by the petitioner in her appeal before appellate authority.

(WASIM SADIQ NARGAL)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
11 .05.2026
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes