Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1428 of 2026

M/s Bengal Properties Pvt. Ltd. & anr.
Versus
The Joint Commissioner of Revenue Chowringhee Circle, Directorate of Commercial Taxes & Ors.

For the petitioner	:	Mr. Ankit Kanodia Ms. Megha Agarwal Ms. Tulika Roy Mr. Shovan Ojha Mr. Piyush Khaitan
For the State	:	Ms. Manju Agarwal, Sr. Adv. Mr. Bijitesh Mukherjee Mr. Ram Chand Agarwal
Heard on	:	08.07.2026
Judgment on	**:**	**08.07.2026**

Raja Basu Chowdhury, J (Oral):

1. Challenging the order passed by the appellate authority in Form APL – 02 dated 31st December 2025 arising out of the order dated 21st August 2024 passed under Section 73 WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") for the tax period from 1st April 2019 to 31st March 2020, the instant writ petition has been filed.

2. Mr. Kanodia, learned advocate appearing for the petitioners has drawn the attention of this Court to the show cause notice issued in Form DRC – 01 dated 21st May 2024 and would submit that although the respondents were under an obligation in terms of Section 75(4) of the said Act to afford an opportunity of hearing to the petitioners, inasmuch as, an adverse decision was contemplated, in this case no such opportunity of hearing was afforded. According to the petitioners by reasons of the tax consultant leaving the job, the petitioner did not notice the order in time. This apart, the order itself was uploaded on the portal under the tab and view "additional notices and orders" in place and stead of "viewed notices and orders". As such, the petitioners being unaware of the aforesaid order could not identify the same in time which led to the delayed filing of the appeal. The appellate authority, however, mechanically rejected the appeal by the order impugned by holding that it was incompetent to condone the delay beyond the prescribed period. Mr. Kanodia would submit that the delay has occasioned for reasons, as aforesaid and the delay is for 206 days which had been explained.

3. This apart, he submits that the major part of amount determined by the adjudicating authority is based on disallowance of input tax credit having regard to the provisions contained in Section 16(4) of the said Act. He submits that in the instant case, subsequent to the clarificatory amendment being introduced in the said Act vide Finance (No. 2) Act, 2004 (15 of 2004), dated 16th August 2024, with effect from

1st July 2017, whereby sub –Section (5) to Section 16 was inserted, the demand raised by the respondents no longer survives as the returns in the instant case were filed prior to the cut off date, i.e,. 30th November 2021.

4. In light of the above according to him, not only the adjudication order, but the appellate order also cannot be sustained, the same should be set aside.

5. Ms. Agarwal, learned Senior Advocate appearing for the State on the other hand submits that the petitioners did not raise the issue of violation of principles of natural justice or the issue of non compliance of the provisions of Section 75(4) of the said Act before the appellate authority. As such, it is too late in the day for the petitioners to raise such issues. On the aspect of the demand raised by the respondents being diluted, having regard to the insertion of Section 16(5) of the said Act, she submits that these are factual issues and ordinarily no interference is called for by this Court. This apart she submits that the appellate tribunal has already become functional. As such, the petitioner has an alternate remedy, as such no interference is called for.

6. Having heard the learned advocates appearing for the respective parties, I find that the instant writ petition was filed on 20th January 2026, and at the relevant point of time the appellate tribunal was not available. The matter was subsequently taken up for consideration on 9th June 2026. The writ petition is pending for about six months now.

This apart, as rightly pointed out by Mr. Kanodia from the show cause notice as disclosed in the present writ petition, it is apparent that the petitioners were not afforded with an opportunity of personal hearing. Admittedly, in this case, the show cause notice contemplates passing of an adverse order. Having regard thereto, ordinarily in terms of Section 75(4) of the said Act, the adjudicating authority was obliged to offer an opportunity of personal hearing to the tax payer. The same has not been done. There appears to be a glaring inconsistency in service of such order as well. Having regard to the provisions contained in Section 169 of the said Act, though one of the modes of service as contemplated in the said Section is service through common portal, however, in the instant case the order that was uploaded on the common portal was not uploaded under the tab "view notices and orders" rather the same was uploaded under the tab "view additional notices and orders". Ordinarily, all orders are uploaded under the tab "view notices and orders" and accordingly, the explanation given by the petitioners that the petitioners being unaware were prevented from filing the appeal within the prescribed period appears to be plausible.

7. The other aspect that the Court cannot ignore is with regard to insertion of Section 16(5) of the said Act. Admittedly, in this case from the show cause as is apparent, a major portion of the demand is based on the reversal of Input Tax Credit availed by the petitioners in terms of the provisions contained in Section 16(4) of the said Act which has

since been diluted to a large extent having regard to the insertion of Section 16(5) in the said Act.

8. Though, Ms. Agarwal has tried to impress upon this Court, that factual issue cannot be gone into in an application under Article 226 of the Constitution of India, in my view, when the returns have been filed by the petitioners and there being no dispute on the date of filing the return, there should be no difficulty to ascertain whether the returns were filed within the cut off date as set forth in Section 16(5) of the said Act. Be that as it may, considering the fact that a three tier adjudicatory process has been provided for, it shall be prudent at this stage to remand the matter back to the appellate authority by directing the appellate authority to hear out and dispose of the appeal on merits in accordance with law.

9. As a sequel thereto, the order passed by the appellate authority dated 31st December 2025 along with the show notice is set aside. The matter is remanded back.

10. It is expected that the appellate authority shall dispose of the appeal on merits as expeditiously as possible preferably within a period of 3 months from the date of communication of this order.

11. With the above directions and observation, the writ petition is disposed of.

12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
A.R. (Court)