Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 7571 of 2026

Savera Vinimay Private Limited & Anr.
Versus
The State of West Bengal & Ors.

For the petitioners	:	Mr. Himangshu Kumar Ray Mr. Subhasis Podder Ms. Shiwani Shaw Mr. Animitra Roy Mr. Rantu Bose
For the State	:	Mr. Suryaneel Das, Ld. AGP Mr. Bijitesh Mukherjee Ms. Manasi Mukherjee
Heard on	:	08.07.2026
Judgment on	**:**	**08.07.2026**

Raja Basu Chowdhury, J (Oral):

1. Affidavit of service filed in Court is taken on record.

2. The instant writ petition has been filed, inter alia, not only challenging the show cause notice issued under Section 74 of the CGST/WBGST Act, 2017 (hereinafter referred to as the "said Act") dated 26th June, 2025 for the tax period 2018-19 but also the adjudication order dated 26th December, 2025.

3. Mr. Ray, learned advocate representing the petitioners would submit that the determination made by the proper officer is beyond the terms of the show cause and as such the same is not sustainable. In this context, he has placed reliance on the provisions of Section 75(7) of the said Act.

4. Mr. Das, learned Additional Government Pleader appearing on behalf of the State would submit that in the response filed by the petitioners diverse additional disclosures had been made. In this context by placing reliance on the order passed by the adjudicating authority he submits that tax due on undisclosed turnover was from time to time communicated to the taxpayers during the adjudication process. According to him, certain documents under the heading price drop and an excel file comprising list of credit notes received from his suppliers on the ground of price drop at the time of final hearing was disclosed by the petitioners. The said document has been taken into consideration by the adjudicating authority. The order records that the total amount of credit notes received on the ground of price drop is Rs.1,26,72,294/- as per the submission of the taxpayer the amount of total credit notes issued on the ground of price difference is Rs.94,30,848/-. On scrutiny it transpired that the credit note issued under the heading price drop had not been declared in returns. The taxpayer had declared credit notes to the tune of Rs. 59,81,866/- only in the returns while on sample

checking on the portal as per reconciliation statement submitted it was revealed that the taxpayer decreased his taxable turnover by virtue of such credit notes in addition to the credit notes declared in GSTR 1 in the portal. This aspect has been clearly dealt with having regard to the provisions contained in Section 34 of the said Act and based on the aforesaid, the final adjudication order has been passed. There is no irregularity in the order. If the petitioners are aggrieved, the petitioners have an alternative remedy in the form of appeal before the appellate authority under Section 107 of the said Act, the petitioners without availing such remedy have approached this Court.

5. Having heard the learned advocates appearing for the respective parties I find in the instant case, in the show cause notice the proper officer has identified the following discrepancies which were detected. To morefully appreciate the same the relevant portion of the aforesaid show cause is extracted hereinbelow:-

Sr. No.	Particulars	Taxable Supply Value	Tax		Interest		Penalty	
			Central Tax	WB State Tax	Central Tax	WB State Tax	Central Tax	WB State Tax
1	Tax due on undisclosed Turnover	32,65,141	2,93,863	2,93,863	3,74,675	3,74,675		
2	Tax due on Miscellaneous Income	43,43,007	3,90,871	3,90,871	4,98,360	4,98,360		
3	Other Finance Cost	11,78,720	1,06,085	1,06,085	1,35,258	1,35,258		
4	Other Expenses	29,32,671	2,63,940	2,63,940	3,36,524	3,36,524		
5	Travelling & Conveyance Expenses	15,69,105	1,41,219	1,41,219	1,80,055	1,80,055		
6	Advances from Customers	6,08,207	54,739	54,739	69,792	69,792		
	Total		12,50,717	12,50,717	15,94,664	15,94,664	12,50,717	12,50,717

6. I also note in the adjudication order the adjudicating authority has determined the following amount to be payable. To morefully

appreciate the same the relevant portion thereof is extracted hereinbelow:-

The following amounts are required to be paid by the Taxpayer-

Taxable Turnover Detected	Taxable Value of Supply	Tax		Interest		Penalty	
		Central Tax	WB State Tax	Central Tax	WB State Tax	Central Tax	WB State Tax
Tax due on Turnover reduced in contravention of law	94,30,848	8,48,776	8,48,776	11,58,580	11,58,580		
Inadmissible ITC for non payment to the Suppliers	1,26,72,295	11,40,507	11,40,507	15,56,791	15,56,791		
Inadmissible ITC for non payment to the Suppliers	4,53,14,243	40,78,282	40,78,282	55,66,855	55,66,855		
Total		60,67,565	60,67,565	82,82,226	82,82,226	60,67,565	60,67,565

Interest is calculated up to December 2025.
The Auditee is requested to recalculate the Interest up to the actual date of payment.
Penalty is charges u/s 74 of CGST/WBGST Act, 2017.

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7. As would appear from the above I find that the determination made in the adjudication order does not stand substantiated on the ground indicated in the show cause. The learned advocate for the State has also acknowledged such fact. He would, however, submit that since the petitioners had held back information and the subsequent disclosure made by the petitioners formed the basis of the adjudicating order, the said finding cannot be said to be irregular. On the aforesaid score I find that the Section 75(7) of the said Act, *inter alia*, provides that the amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice, and no demand shall be confirmed on the grounds other than the grounds specified in the notice. On such ground the order falls short as the grounds based on which the demand has been confirmed are not entirely available in the show cause notice. The final demand made in the adjudication order is also higher than the demand made in the show-cause. In

light of the above, I am of the view at this stage it shall only be prudent to remand the matter back to the adjudicating authority by directing the order passed by the adjudicating authority under Section 74 of the said Act to be treated a show cause for the petitioners to respond to the same on merits only. The petitioners shall accordingly be at liberty to respond to the aforesaid order by treating the same as show cause within a period of three weeks from date.

8. In the event, the petitioners respond to the same or in the alternative no response is filed by the petitioners within the aforesaid period, the adjudicating authority shall hear out and dispose of the aforesaid proceeding upon giving an opportunity of hearing to the petitioners in accordance with law.

9. The adjudicating authority shall be at liberty to conclude the proceeding within a period of four weeks from the date of affording the opportunity of hearing to the petitioners. It is made clear that the petitioners must cooperate with the adjudicating authority and shall not seek for any unnecessary adjournment.

10. After the order is passed, since the learned advocate for the petitioners by placing before this Court the photostat copy of electronic credit ledger would submit that a sum of Rs.1,21,35,130/- has been recovered from the petitioners, I am of the view, the recovery made from the petitioners shall abide by

the result of the order of the adjudicating authority and that the time limits provided herein are peremptory.

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

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

sb
A.R. (Court)