IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

W.P.A. 1197 of 2026

Sagar Ghosh
Vs.
Deputy Commissioner, State GST & Ors.

For the Petitioner	: *Mrs. Rita Mukherjee* *Mr. Abhijat Das* *Mr. Anirban Chatterjee* *Mrs. Hiqa Naz Pardhan* *Ms. Anwesha Chakraborty*
For the State	: *Mr. Jagriti Mishra, AAAG,* *Ms. Mrinmayee Das*
For the Respondent Nos. 6 & 7	: *Mr. Ratan Banik* *Mr. Biswa Raj Agarwal*
Heard and Reserved on	: *29/07/2026*
Judgment on	: *31/07/2026*

Hiranmay Bhattacharyya, J. :-

1. This Application under Article 226 of the Constitution of India is at the instance of the Registered person and is directed against the adjudication order dated March 13, 2024 passed by the first respondent; the appellate order dated March 20, 2025 passed by the second respondent and the recovery letter dated May 27, 2026.

2. An enforcement case was initiated against the petitioner on 29 January, 2021 and subsequently notice was issued to produce the documentary evidences to prove the genuineness of ITC. A final report was drawn by the enforcement officer on 9th December, 2022 recommending the case for adjudication under Section 74 of the WBGST/CGST Act, 2017. On the basis of the recommendation of the enforcement officer, an adjudication proceeding under Section 74 (5) of the WBGST/CGST Act, 2017 was initiated against the petitioner on 2nd March, 2023. Intimation in GST/DRC-01A was issued directing the petitioner to produce the documentary evidences to prove the eligibility of ITC involved before the said authority or to pay the amount of tax as ascertained along with interest and penalty. Thereafter a show cause notice in GST/01 was issued to the petitioner on 15th March, 2023. Alleging that the petitioner failed to reply to the show cause notice, two reminder notices were issued to the petitioner on 24th April, 2023 and 21st December, 2023. Petitioner replied to the second reminder notice by a reply on 28th December, 2023. The Deputy Commissioner, State GST, Bureau of Investigation, North Bengal, HQ, as an adjudication authority, passed an order dated 13th March, 2024. It was observed in the said order that the Input Tax Credit (ITC) claimed on inward supplies from five suppliers were found to be ineligible and the petitioner was liable to reverse the ineligible ITC along with interest and penalty under Section 74 of the WBGST.

3. Being aggrieved by the order of adjudication, petitioner preferred an appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 read with CGST Act, 2017. The appellate authority, by an order dated March 20, 2025, dismissed the said appeal as not entertained as the same was submitted electronically beyond the stipulated time.

4. Challenging the orders of the adjudicating authority and the appellate authority, petitioner has approached this Court.

5. Ms. Mukherjee, Learned Advocate appearing for the petitioner drew the attention of this Court to the status report obtained from the GST portal regarding the jurisdiction of proper officer for initiation of proceedings which is annexed at Page 43 of the writ petition in support of his contention that the petitioner is administratively vested with the Central Tax Authorities. She submitted that the show cause notice was issued and the adjudication order was passed by the State Tax Authorities. She further submitted that since no notifications have been issued for cross empowerment under Section 6(1) of the respective GST enactments with the advice of the GST Council, except for the purpose of refund, the adjudication order passed by the first respondent being the State Tax Authority is illegal and without jurisdiction. In support of such contention she placed reliance upon the Judgment delivered by the Hon'ble Madras High Court in **Pvl. Vardhan Infrastructure vs. Special Secretary, Head of the GST Council Secretariat reported at (2024) 160**

Taxmann.com 771 (Madras). She further contended that the respondent no.1 is an officer under the ITC Investigation Unit and has no power, authority and jurisdiction to conduct any proceedings under the CGST/WBGST Act, as the ITC Investigation Unit has been declared illegal by an order dated 24th August, 2021 passed by the Learned West Bengal Taxation Tribunal. She further submitted that the respondent no.1 being an officer under the Bureau of Investigation, lacks inherent jurisdiction to issue show cause notice and pass an order of adjudication. In support of such contention, she placed reliance upon an order being no. 09/WBGST/PRO/2019 dated 20th November, 2019 issued by the Commissioner, State Tax, West Bengal. In support of the contention that the adjudicating authority lacked jurisdiction, she placed reliance upon an order dated 8th July, 2026 passed by a co-ordinate bench in **WPA 14040 of 2026 in the case of Hahnemann's Jac Olivol Group of Products Pvt. Ltd. & Anr. Vs. The Joint Commissioner of State Tax Bureau of Investigation (South Bengal) & Ors.**. She thus submitted that since the authorities lacked jurisdiction to issue the show cause notice and pass the order of adjudication, she has approached this Court under Article 226 of the Constitution of India.

6. *Per contra,* Mr. Mishra, Learned Assistant Additional Advocate General contended that an appeal lies before the GST Appellate Tribunal under Section 112 of the WBGST/CGST Act, 2017 against an order passed by the appellate authority under Section 107 of the

said Act. He submitted that the GST Appellate Tribunal has already become functional. He submitted that since an alternative and efficacious appellate remedy under Section 112 is available, this Court should not entertain the instant writ petition. In support of such contention Mr. Mishra placed reliance upon a Judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal reported at (2014) 1 SCC 603**. He also placed reliance upon the Judgment of the Hon'ble Madras High Court dated **26th July, 2017 in Writ Appeal No. 341 of 2017 in the case of M/s. Hypertherm (India) Thermal Cutting Pvt. Ltd. Vs. The Deputy Commissioner of Service Tax III Division** and the Judgment of the Hon'ble Division Bench of the **Orissa High Court dated 2nd February, 2026 WP(C) No.17390 of 2023 in the case of Shiva Prasad Pattnaik vs. The Commissioner, Commercial Tax & GST Odisha & Ors.**. Mr. Mishra also placed reliance upon a Judgment dated February 10, 2026 passed by a co-ordinate bench at the Circuit Bench at Port Blair in Batch of writ petition the lead case being **WPA 345 of 2025 in the case of M/s. Seashell vs. The Lt. Governor & Ors**. in support of his contention that the co-ordinate bench directed the writ petitions to be transferred/transmitted to the Appellate Tribunal. Mr. Mishra further contended that a reading of Section 6(1) of the CGST Act, 2017 makes it clear that the officers appointed under the State Goods Services Tax Act, is a proper officer for the purposes of the Central Goods Services Tax Act, and it is only when any restriction or condition has to be placed on the exercise of power by any officer appointed under the State Goods Services Tax Act that a notification as contemplated by the provisions of Section 6(1) of the CGST Act has to be issued. In support of such contention, he placed reliance upon the decision of the Hon'ble Division Bench of the **Kerala High Court in the case of Pinnacle Vehicles and Services Pvt. Ltd. Vs. Joint Commissioner, (Intelligent and Enforcement) & Ors. reported at (2025) SCC OnLine Ker 231**. He also referred to a decision of the Hon'ble Division Bench of **Jammu & Kashmir & Ladakh in the case of R.K. Ispat Limited vs. Union of India & Ors. reported at 2025 SCC OnLine J&K 982** for the same proposition. He thus contended that there was no requirement for issuance of a notification under Section 6(1) of the said Act for Cross Empowerment.

7. In reply Ms. Mukherjee, Ld. Advocate for the petitioner contended that availability of an alternative remedy cannot be an embargo in entertaining a writ petition under Article 226 of the Constitution in a case where the authority against whom the writ is filed is shown to have no jurisdiction or had purported to usurp jurisdiction without any legal foundation. In support of such contention she placed reliance upon the decisions of the Hon'ble Supreme Court in case of **Calcutta Discount Company Ltd. vs. Income Tax Officer, Companies District I Calcutta & Anr. reported at 1960 SCC OnLine SC 10; Whirlpool Corporation vs. Registered of Trade**

Marks Mumbai & Ors. reported at (1998) 8 SCC 1 and State of HP & Ors. vs. Gujarat Ambuja Ltd. & Anr. reported at (2005) 6 SCC 499. She thus contended that the proceedings initiated by the respondents are an abuse of the process of law and, therefore, the High Court should entertain this writ petition.

8. Heard the Ld. Advocates for the parties and perused the materials placed.

9. There is no quarrel to the proposition of law laid down in **Chhabil Das Agarwal (*supra*)** that the High Court does not act as a court of appeal against the decision of a court of tribunal to correct errors of fact and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief.

10. There is also no quarrel to the proposition of law laid down in **Shiva Prasad Pattnaik (*supra*)** and **M/s. Seashell (*supra*)** that writ court can be approached assailing an order for which the forum of appeal is provided and the same is entertainable in the event the forum is not functional or constituted as the person cannot be rendered remediless. It is equally settled that once the forum of appeal is made functional and constituted, the writ petitioner can be relegated to the appellate forum.

11. There is no quarrel to the proposition of law laid down in **Hypertherm (*supra*)** that violation of the principles of natural justice as well as the point that the original authority took note of the

provision not stated in the show-cause notice can be raised before appellate authority.

12. The question that arises for consideration is whether a writ petition should be thrown out at the threshold when a jurisdictional issue is raised in the writ petition questioning the very competence of the authority to adjudicate upon an issue.

13. In **Whirlpool Corporation (*supra*)** the Hon'ble Supreme Court held that an alternative remedy will not operate as a bar to the maintainability of a writ petition in at least four contingencies namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order of proceedings challenged are wholly without jurisdiction or the vires of an Act is challenged.

14. In **Gujarat Ambuja Ltd. (*supra*)** the Hon'ble Supreme Court after taking note of various decisions held that where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the authorities are shown to have assumed jurisdiction which they do not possess the writ petition can be entertained. It was further held therein that where the proceedings itself are an abuse of process of law the High court in an appropriate case can entertain a writ petition.

15. In **Calcutta Discount Company Ltd. (*supra*)** it has been held that the existence of an alternative remedy is not however always a

sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

16. In **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer cum Assessing Authority & Ors. reported at 2023 SCC OnLine SC 95** the Hon'ble Supreme Court held that if a jurisdictional issue is raised in a writ petition questioning the very competence of the authority to pass an order and such jurisdictional issue is a pure question of law, such a writ petition ought not to have been thrown out at the threshold.

17. What follows from the aforesaid discussion is that if a jurisdictional issue questioning the competence of an authority to exercise a power is raised in a writ petition and such issue is a pure questions of law and does not involve adjudication of disputed question of facts, a writ petition may be entertained instead of dismissing the same merely on the ground of availability of alternative remedy.

18. In the case on hand, the order of adjudication has been passed by an authority posted at Bureau of Investigation. The order dated 20th November, 2019 issued by the Commissioner, State Tax West Bengal states that the officer posted in Head Quarters or Zonal Offices of an Unit of Bureau of Investigation shall exercise jurisdiction over any person including a tax payer, transporter or person in charge of a vehicle, irrespective of the specific location of the place of business of such transporter or person for carrying out enforcement activity in

respect of storage of goods or transportation or movement of goods into, within, out of or through the State of West Bengal, provided the goods are stored or the vehicle is intercepted within a jurisdiction of a Head Quarter or Zone of a unit of Bureau of Investigation in which he is posted. The said order further states that for the purpose of investigation including ITC Investigation, the officers posted in any Head Quarter or Zonal Offices of units of Bureau of Investigation shall have jurisdiction all over State of West Bengal in connection with or incidental to investigation relating to tax payer or person having place of business under the territorial jurisdiction or respective Head Quarters or Zonal offices as the case may be.

19. The petitioner would contend that an officer of Bureau of Investigation only has the power of carrying out an enforcement activity and shall have jurisdiction in connection with or incidental investigation but lacks the jurisdiction to make an adjudication under Section 74 of the WBGST/CGST Act, 2017.

20. It *prima facie* appears to this Court that the respondent no.1 being an officer of the Bureau of Investigation was vested with the enforcement activity and investigation including ITC investigation. Whether such officers also have the power of adjudication is the issue which has to be considered and decided. An opportunity should be afforded to the respondents to substantiate that such officers also have the power of adjudication under Section 74 of WBGST/CGST Act, 2017.

21. Insofar as the issue of cross empowerment is concerned, this court finds that there is divergence of opinion expressed by different High Courts. The Hon'ble Madras High Court in **Tvl. Vardhan Infrastructure (*supra*)** held that if an assessee has been assigned administratively with the central authority pursuant to the decision taken by the GST Council, the State authorities have no jurisdiction to interfere with the assessment proceedings in absence of corresponding notification under Section 6 of the respective GST enactments.

22. On the other hand the Hon'ble High Courts of Kerala in **Pinnacle Vehicles & Services (*supra*)** and Jammu & Kashmir & Ladakh in **R.K. Ispat Ltd. (*supra)*** have held that cross empowerment envisaged under sub-Section (1) of Section 6 is automatic and the result of legislative mandate and no separate notification by the Government on the recommendation of the GST council is required to effectuate cross empowerment. The power to issue notification arises only if the Government seeks to impose conditions on such empowerment and in the absence of a notification, officers appointed under the State GST Legislature automatically act as proper officer for the purposes of CGST Act.

23. After going though the writ petition, this Court finds that the petitioner has raised jurisdictional issues and has also questioned the competence of the respondent no.1 to issue the show cause notice and pass the order of adjudication.

24. It does not appear from the adjudication order that the aforesaid jurisdictional issues have been raised by the petitioner before such authority.

25. Since various jurisdictional issues are involved in this matter, this Court has exercised its discretion and entertained this writ petition. This Court, however, feels that the matter should be remanded to the adjudicating authority to decide the jurisdictional issue(s) raised by the petitioner.

26. It is well settled that an adjudicating authority is also vested with the power to rule on its jurisdiction.

27. For such reason, this court is inclined to interfere with the order of adjudication and the appellate order as well as all consequential steps taken thereafter with liberty to the petitioner to raise the issue of jurisdiction before the adjudicating authority.

28. The order dated 8th of July, 2026 passed in WPA 14040 of 2026 is an interim order and no ratio has been decided therein. Therefore, the said order cannot be said to be a binding precedent upon this Court.

29. Accordingly, the writ petition stands **allowed**. The adjudication order dated 13th of March, 2024 passed by the first respondent and the appellate order dated 20th March, 2025 passed by the second respondent and all consequential steps taken thereafter are set aside and quashed. The petitioner is given liberty to submit a comprehensive reply to the show cause notice raising all points therein including the issue of jurisdiction within a period of 14

(fourteen) working days from the receipt of a server copy of this order. The first respondent shall fix a date of hearing after the expiry of the period fixed by this Court for filing of the reply to the show cause and the date of hearing shall be intimated to the petitioner well in advance. The first respondent shall decide the issue of jurisdiction, if raised by the petitioner, as the first issue and shall thereafter decide the other issues afresh strictly in accordance with law by passing a reasoned order after affording an opportunity of hearing to the petitioner and communicate such order to the petitioner immediately thereafter.

30. It is however made clear that the observations made herein before are only for the purpose of supporting the ultimate conclusion and the respondent no.1 shall be free to decide the matter on remand independently and uninfluenced by the observations made by this Court in this order as well as in the adjudication order dated 13th March, 2024 and the appellate order dated 20th March, 2025.

31. There will be, however no order as to costs.

32. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

Chamber
Subhankar (P.A.)