Form J(2)
JPD Sl.No. 50
Moumita

In the High Court at Calcutta
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

WPA 642 OF 2026

Shibani Guha
Vs.
Assistant Commissioner or Revenue (WBRS), Commercial Taxes (SGST), Siliguri Charge & Ors.

For the Petitioner	:	Mr. Boudhayan Bhattacharyya, Adv. Ms. Stuti Bansal, Adv. Ms. Keya Kundu, Adv. Ms. Shubhangi Banerjee, Adv.
For the CGST	:	Mr. Ratan Banik, Adv. Mr. Dilip Kr. Agarwal, Adv.
Heard on	:	August 10, 2026
Judgment on	:	August 10, 2026

[**In Court**]

<u>Aniruddha Roy, J.</u> :

1. Mr. Boudhayan Bhattacharyya, learned Advocate appears for the petitioner.

2. Mr. Jagriti Misra, learned AAAG appears for respondent nos. 1, 2, 3 and 5.
3. Mr. Ratan Banik, learned Advocate (VC) with Mr. Dilip Kr. Agarwal, learned Advocate appears for the respondent nos. 4 and 6.
4. Through this writ petition the petitioner has challenged the impugned order passed by the GST authority dated ***February 20, 2025 at page 45*** to the writ petition in exercise of power under ***Section 63 of WBGST Act, 2017/the CGST Act 2017*** (hereinafter, the said 2017 Act).
5. Initially the order was not served upon the petitioner, as contended by her. The petitioner after come to know of the impugned order through email on ***March 9, 2026 annexure p-4 at page 28*** to the writ petition had applied before the GST authority for obtaining the documents mentioned therein including the said impugned order when the impugned order ultimately was *'served again'* on ***March 30, 2026***, as would be evident from ***page 48*** to the writ petition.
6. Mr. Boudhayan Bhattacharyya, learned Advocate appearing for the petitioner referring to the registration document at ***page 22*** to the writ petition submits that, petitioner at all material time is registered under the 2017 Act and the date of issue of registration certificate was ***February 1, 2021***. Referring to the impugned order passed under Section 63 of 2017 Act he submits that, Section 63 applies only for the assessment of unregistered persons. Since, the petitioner admittedly a registered person within the meaning of ***Sub-Section 94 to Section 2 of***

2017 Act, Section 63 of the Act would not apply and, therefore, the impugned order is without jurisdiction. The illegality, *per se* is *ex facie* on the face of the impugned order.

7. Mr. Boudhayan Bhattacharyya, learned Advocate appearing for the petitioner referring to Section 63 of 2017 Act submits that, the said provision provides for assessment of an unregistered person and not for unregistered period whereas the order impugned shows that, the petitioner was assessed for the period 2017-2018, the pre-registration period.

8. In the light of the above, the petitioner submits that, the said impugned order and all connected proceeding therein or thereunder should be quashed and set aside forthwith.

9. Mr. Jagriti Misra, learned AAAG, at the threshold submits that, in view of the provisions laid down under ***Section 107 of 2017 Act,*** the writ petition is not maintainable and the petitioner should have applied before the first appellate authority under Section 107 of the 2017 Act.

10. Mr. Ratan Banik, learned Advocate appearing for respondent nos. 4 and 6 has adopted the submissions of Mr. Jagriti Mishra and prays for dismissal of this writ petition.

Decision:

11. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the document of registration of the petitioner at page 22 is not disputed or denied. It further

appears to this Court that, the provision under Section 63 provides for assessment of unregistered person. On a careful scrutiny of the impugned order it appears that, the grounds mentioned therein shows the incidents for which the petitioner was assessed were of 2017-2018, the pre-registration period.

12. On a reading of Section 107 of 2017 Act this Court finds that, if a person is aggrieved by an order passed under Section 63 of the 2017 Act, the statute provides for first appeal under Section 107 of 2017 Act, which is otherwise and efficacious, alternative statutory remedy.

13. The law is well-settled that, existence of alternative remedy is not an absolute bar for entertaining or maintaining a writ petition before the high prerogative writ jurisdiction of this Court. It is a self-impose restriction. The established practice, as settled with the passage of time in law is that, if a writ Court finds there is an ex facie illegal or jurisdictional error which is not required to be gone into any further with a slightest fact finding enquiry, a writ petition can be maintained but where there is a scope for any fact finding enquiry to come to a logical conclusion on the issue, a writ Court in exercise of its high prerogative writ jurisdiction, which is otherwise discretionary and equitable one, shall not exercise the writ jurisdiction, more so where an alternative remedy is provided under this statute.

14. To come to a conclusion whether the pre-registration transaction would be covered under the provisions of Section 63 of 2017 Act for an existing

registered person, some fact finding enquiries are required to be conducted. In the light of the provisions laid down under 2017 Act, the impugned order does not demonstrate to be *ex facie* without jurisdiction unless a proper adjudication is made, for which fact finding enquiries are also required. Hence, the first appellate authority empowered under Section 107 of 2017 is the appropriate and jurisdictional forum, in the considered view of this Court.

15. ***Sub-section 4 to Section 107*** provides the power upon the appellate authority to condone the delay in preferring the appeal having sufficient cause being found. Therefore, there is no absolute bar in entertaining an appeal beyond the period of limitation as mentioned in the statute, but of course subject to the satisfaction of the appellate authority upon sufficient cause being shown.

16. In view of the forgoing reasons and discussions, the petitioner shall be at liberty to file the statutory appeal under Section 107 of the 2017 Act ***within six weeks from date***.

17. In the event, an appeal is filed the appellate authority shall consider the same in every respect strictly in accordance with law.

18. It is made clear that, this Court has not expressed any opinion on the applicability of Section 63 of 2017 Act in the facts and circumstances of the case and such issue is kept open to be decided by the appellate authority in accordance with law.

19. It is made clear that, this Court has not gone into the merits of the rival contentions of the parties and all points are kept open to the parties before the appellate authority.

20. Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

21. With the above observations and directions, this writ petition ***WPA 642 of 2026*** stands ***disposed of***, without any order as to costs.

22. Parties shall act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)