BATTLES IN GST

A compilation of

100 DECISIONS

from the Chambers of

Adv Ankit Kanodia

100 DECISIONS

REAL ISSUES.
REAL ARGUMENTS.
REAL IMPACT.

FOREWORD BY

Shri Khalid Aizaz Anwar

Commissioner, WB State GST

AUTHENTIC DECISIONS | PRACTICAL INSIGHTS | STRONG ARGUMENTS | PRACTICE FOCUSED

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A Compilation of 100 Decisions

from the Chambers of

Adv. Ankit Kanodia

Advocate, Calcutta High Court

Dedicated to my Grandparents

Late Madan Lalji Kanodia
Late Angoori Devi Kanodia

PREFACE

This compilation is the product of nearly eight years of contested practice in the field of indirect taxation, with the Goods and Services Tax regime at its centre. When GST was rolled out on 1st July 2017, those of us who appeared in the constitutional courts on tax matters knew that the next several years would be defined less by the elegance of the statutory text and more by the friction generated when that text met the realities of trade, of administration, and of due process. The hundred decisions assembled in this volume are, in many ways, a record of that friction.

Each of the matters reproduced here was personally argued by the author before the Hon'ble Supreme Court of India, the High Courts of Calcutta, Gauhati, Sikkim, Madhya Pradesh, Allahabad, Jharkhand and elsewhere, the Customs, Excise and Service Tax Appellate Tribunal, and the various Authorities and Appellate Authorities for Advance Ruling. The volume is therefore not a digest in the conventional sense; it is a working record of propositions that were pleaded, contested and ultimately ruled upon, with the experience of the lis still freshly remembered.

The decision to organise this material around themes rather than chronology was deliberate. A practitioner facing a show cause notice under Section 74, or a goods-detention order under Section 129, or a refund rejection under Section 54, ordinarily does not begin by asking when a particular decision was rendered. The first instinct is to locate the closest line of authority on the precise issue at hand. This compilation has therefore been structured topic-wise, beginning with the applicability of exemption notifications, moving through the law on input tax credit, registration, classification, refunds, ocean freight, export of services, the contours of fraud and suppression under Section 74, parallel proceedings, recovery, the prohibition against travelling beyond the show cause notice, jurisdictional questions, advance rulings, e-way bill detentions, limitation and the operation of Section 168A, principles of natural justice, the appellate framework and Section 128A waivers,

service of notice under Section 169, the residual jurisprudence under the erstwhile Central Excise regime, and the contours of Rule 86A blocking of the electronic credit ledger. The arrangement reflects the way these issues are encountered in actual litigation.

Several recurring threads will be apparent to the reader. The first is the steady judicial insistence that adjudication under Sections 73, 74 and 74A must be preceded by an application of mind, by a meaningful consideration of the assessee's reply, and by a reasoned order. The second is the gradual but unmistakable softening of judicial attitudes toward bona fide recipients of input tax credit who are sought to be visited with the consequences of supplier defaults, a development that began with the Calcutta High Court's decision in Suncraft Energy and has since travelled to the Supreme Court. The third is the increasingly principled approach the constitutional courts have brought to bear upon search, seizure, detention and the blocking of credit, where the proportionality of executive action has been tested against Articles 14, 19 and 265. The fourth, and perhaps the most important from the standpoint of a practising counsel, is the emerging recognition that procedural fairness is not a peripheral courtesy but a substantive entitlement under the GST framework.

A word on what this volume does not attempt. It does not seek to be exhaustive of the entire body of GST jurisprudence that has emerged in the first eight years of the regime. The cases reproduced here are those in which the author personally appeared, and the compilation must necessarily reflect that boundary. Where larger or more authoritative judgments on the same point exist, the reader is encouraged to consult them in conjunction with the decisions presented here. This volume is offered as a working tool for the practitioner and as a record of one set of chambers' engagement with the GST regime, not as a treatise on the law.

I am indebted to the Hon'ble Judges before whom these matters were argued, to the clients who reposed their confidence in me and whose

matters form the substance of this book, and to my colleagues at the Bar in Calcutta and elsewhere from whom I have learnt every day. I am grateful to Shri Khalid Aizaz Anwar, IAS, Commissioner of Commercial Taxes, Government of West Bengal, for graciously consenting to write the Foreword to this volume; his association with this work lends it a stature it could not otherwise have claimed. I also acknowledge with affection the members of my Chambers who have worked patiently through several iterations of the manuscript, the case law tracking, the proof-reading and the cross-referencing, without which a project of this scale would not have been possible.

With the forthcoming operationalisation of the Goods and Services Tax Appellate Tribunal under the Procedure Rules, 2025, and the continuing refinement of the substantive law through successive Finance Acts and recommendations of the GST Council, the body of jurisprudence in this field will only expand. It is my modest hope that this compilation will be of some service to those who must navigate that expanding terrain, and that it will encourage younger members of the Bar to approach the law of indirect taxation with the rigour and the patience it deserves.

If a single proposition were to be drawn from these hundred decisions, it would be this: in a regime as densely procedural as GST, the law of process and the law of substance are no longer separable. A reasoned order matters as much as a correct one. The cases that follow attempt to illustrate that proposition in detail.

Adv. Ankit Kanodia
Advocate, Calcutta High Court
Kolkata

KHALID AIZAZ ANWAR, I.A.S.
COMMISSIONER
COMMERCIAL TAXES, WEST BENGAL
14, BELIAGHATA ROAD, KOLKATA - 700015
Tel : 033 7122-1003
Email : cct.ctax@nic.in

FOREWORD

It gives me great pleasure to pen this Foreword for the present compilation of landmark judgments under the Goods and Services Tax regime, an effort painstakingly put together from the Chambers of Adv. Ankit Kanodia. The introduction of GST on 1st July 2017 marked the most ambitious and far-reaching indirect tax reform that this country has witnessed since Independence. The reform sought to subsume a multiplicity of central and state levies into a single, unified, destination-based consumption tax, founded upon the constitutional architecture envisaged by the Constitution (One Hundred and First Amendment) Act, 2016.

Any tax reform of such scale and magnitude is bound to throw up interpretational challenges. The first eight years of GST have been a period of intense churn, for the legislature, for the administration, and for the taxpayer alike. The provisions of the Central Goods and Services Tax Act, 2017, the State Goods and Services Tax enactments, the Integrated Goods and Services Tax Act, 2017, and the Rules and Notifications issued thereunder, have come up for searching scrutiny before the constitutional courts of this country. The jurisprudence that has emerged in this short span on issues ranging from classification, valuation, and place of supply, to input tax credit, refunds, the scope of Sections 73, 74 and 74A, the validity of Rule 86A, the contours of search, seizure and arrest powers under Sections 67 to 69, and the constitutional limits on summons under Section 70 is both vast and rapidly evolving.

It is in this context that a curated compendium of more than one hundred reported decisions, every one of which has been argued by the author himself, acquires a distinct value. Unlike a generic digest, the present volume carries the imprint of first-hand involvement. Each judgment featured here represents not merely a reported citation, but a contested proposition, a proposition that was researched, briefed, and pressed before the Bench by counsel who appeared in the matter. That dimension lends to this compilation an authenticity and a practical orientation which, in my respectful view, will be of considerable assistance to members of the Bar, to

chartered accountants and tax practitioners, and to the academic community engaged with indirect tax law.

The matters reflected in this volume span proceedings before the Hon'ble Supreme Court of India, several High Courts, and the appellate forums constituted under the GST framework. The breadth of the coverage, traversing procedural questions of natural justice, jurisdictional questions concerning the proper officer, substantive questions on the scope of fraud, wilful misstatement and suppression, and constitutional questions touching upon Articles 14, 19 and 265, makes this a well-rounded contribution to the literature on GST.

The forthcoming operationalisation of the Goods and Services Tax Appellate Tribunal, the continuing refinement of the law through the Finance Acts and the recommendations of the GST Council, and the steady stream of writ jurisprudence from the High Courts, all suggest that the next several years will see further significant developments in this branch of law. Works such as the present one, which preserve and analyse the judicial record as it stands, will provide an indispensable foundation for the jurisprudence yet to come.

I congratulate Adv. Ankit Kanodia and his Chambers on the labour and discipline that this compilation evidently reflects. To have argued, and now to have brought together in one volume, more than a hundred reported decisions on GST is no small accomplishment. I have no doubt that the book will be widely consulted and that it will earn its place on the working desk of every serious student and practitioner of GST law.

I extend my warm wishes to the author and to all those associated with this publication.

06/05/2026

Khalid Aizaz Anwar, IAS
Commissioner of Commercial Taxes
Government of West Bengal
Kolkata

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1. APPLICABILITY OF EXEMPTION NOTIFICATION

CASE LAW 1

IN RE: Anmol Industries Ltd.

the Appellate Authority for Advance Ruling under GST, WB

Petition/Appeal No. Appeal Case No. 3/ WBAAAR/ Appeal of 2024	**Relevant Section/Rule** Section 11 of the CGST Act, 2017 read with Entry No. 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017
Citation (2025) 28 Centax 161 (App. A.A.R. – GST – W.B.)	
Dated 26.11.2024	

Services by way of grant of long-term lease of land by SMPK to the applicant for the purpose of "setting up commercial office complex' as involved in the instant case is found not to be covered under entry 41 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and therefore cannot be treated as an exempt supply.

RULING PER S/SHRI SHRAWAN KUMAR AND DEVI PRASAD KARANAM, MEMBERS

FACTUAL MATRIX

Anmol Industries Ltd. (the Appellant), a company incorporated under the Companies Act, 1956, having its principal place of business at Maity Para, Delhi Road, Hooghly, West Bengal, entered into a leasing agreement with Shyama Prasad Mookerjee Port, Kolkata (SMPK) to lease a

plot of land at Taratala Road for a period of thirty (30) years for the purpose of setting up a commercial office complex.

As per the terms of the allotment, the Appellant was required to pay a substantial upfront lease premium along with applicable GST at the rate of 18%. The Appellant was of the view that such upfront premium should be exempt from GST in terms of Entry No. 41 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.

Accordingly, the Appellant approached the Authority for Advance Ruling (AAR) seeking clarification on whether the upfront lease premium paid for long-term lease would qualify for exemption under the said notification. The WBAAR, vide its Order No. 06/WBAAR/2024-25 dated 29.07.2024, ruled that the services by way of grant of long-term lease of land by SMPK to the Appellant for the purpose of setting up a commercial office complex are not covered under Entry No. 41 of the said Notification and therefore cannot be treated as an exempt supply.

Aggrieved by the said ruling, the Appellant preferred an appeal before the Appellate Authority for Advance Ruling (AAAR). The matter was initially remanded back for fresh consideration. Upon reconsideration, the AAR reiterated its earlier view denying the exemption.

Thereafter, the Appellant once again filed an appeal before the AAAR contending that all the conditions prescribed under the exemption notification were duly satisfied. The primary issue before the Appellate Authority was whether the long-term lease of land for setting up a commercial office complex would qualify as an exempt supply under the relevant GST notification.

JUGDMENT/ORDER OF THE AUTHORITY

1. The Appellate Authority for Advance Ruling (AAAR)

examined the provisions of Entry No. 41 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 and observed that exemption from GST is subject to the fulfilment of specific conditions.

2. The Authority noted that although the Appellant had satisfied certain conditions such as the lease period exceeding 30 years and being an industrial unit, the crucial conditions regarding the nature of use of the land and the status of the service provider were not fulfilled.

3. On the issue of usage, the Authority held that the land was leased for setting up a commercial office complex, which would be used for commercial purposes including renting or sub-leasing of space. Such usage could not be equated with "industrial activity" or "financial activity" as contemplated under the exemption notification. The Authority further clarified that mere maintenance of financial records or carrying out routine office functions does not amount to undertaking financial activity in a financial business area.

4. With respect to the status of the lessor, i.e., SMPK, the Authority observed that it could not be established that the entity had 20% or more ownership of the Central or State Government as required under the notification. The fact that the entity is subject to audit by the Comptroller and Auditor General of India or operates under administrative control of the Government does not, by itself, satisfy the ownership criteria.

5. In view of the above findings, the Appellate Authority concluded that the Appellant had failed to meet all the necessary conditions for claiming exemption under the said notification.

6. Accordingly, the AAAR upheld the ruling of the Authority for Advance Ruling and held that the services by way of grant of long-term lease of land for setting up

a commercial office complex are not eligible for exemption and are liable to GST.

OUR COMMENTS

The ruling reiterates that GST exemptions must be strictly interpreted and are available only when all conditions are fully satisfied. Partial compliance is not sufficient to claim the benefit.

The Authority has clearly distinguished commercial use from industrial or financial activity, holding that construction of office space and routine business functions do not qualify as "financial activity" under the notification.

It also clarifies that mere Government control or audit does not establish ownership; the required level of Government ownership must be specifically proven.

Overall, the decision emphasizes that taxpayers must carefully assess both the purpose of land use and eligibility conditions before claiming exemption, as substance will prevail over form in such cases.

CASE LAW 2

IN RE: Anmol Industries Ltd.

Petition/Appeal No.	**Relevant Section/Rule**
02/WBAAAR/APPEAL/202	Section 11
Citation (2024) 18 Centax 184 (App. A.A.R. - GST - W.B.)	
Dated 18.04.2024	

WBAAR would have adopted a more comprehensive approach in rendering its ruling in the present case if it had documented its observations and findings regarding satisfaction of all the conditions required for deciding the eligibility for the exemption under entry 41 of Notification No. 12/2017-Central Tax (Rate)

— PARA 10.7, SHRAWAN KUMAR AND DEVI PRASAD KARANAM, MEMBERS.

FACTUAL MATRIX

The Anmol Industries Ltd. entered into a 30-year lease agreement with Shyama Prasad Mukherjee Port (SMPK) for a land parcel at Taratala Road, Kolkata, for development of a commercial office complex, against payment of an upfront lease premium of about Rs.39 crore along with 18% GST. The company sought an advance ruling before the West Bengal Authority for Advance Ruling on whether such upfront premium qualified for exemption under Entry 41 of Notification No. 12/2017-CT (Rate), which exempts long-term lease of industrial plots provided by government

entities or entities having 20% or more government ownership. The AAR denied the exemption holding that SMPK could not be treated as an entity having requisite Central Government ownership, after which the company filed an appeal before the West Bengal Appellate Authority for Advance Ruling challenging the ruling and arguing that SMPK is under the administrative control of the Central Government.

JUGDMENT/ORDER OF THE AUTHORITY

The West Bengal Appellate Authority for Advance Ruling observed that the original AAR had examined only one condition relating to whether SMPK had 20% or more Central Government ownership.

The Appellate Authority held that the AAR failed to comprehensively analyse all the conditions prescribed under Entry 41 of Notification No. 12/2017-CT (Rate) before denying the exemption.

It was noted that proper findings regarding lease tenure, nature of industrial use, status of the service provider, and eligibility of the recipient were required for deciding the exemption claim.

The AAAR relied upon earlier judicial precedents which recognized that matters can be remanded where proper opportunity of hearing or complete adjudication has not been undertaken.

The authority held that restricting the ruling to a single condition without examining the complete notification requirements resulted in an incomplete adjudication.

Accordingly, the AAAR set aside the earlier Advance Ruling order and remanded the matter back to the AAR for fresh adjudication after considering all aspects and conditions of the exemption notification.

OUR COMMENTS

The ruling in the case of Anmol Industries Ltd. reinforces the importance of comprehensive adjudication in GST matters, especially while interpreting exemption notifications. The AAAR rightly observed that exemption eligibility cannot be denied by examining only one isolated condition while ignoring the remaining statutory requirements. The decision upholds the principles of natural justice by emphasizing proper hearing before passing an adverse ruling. Although the AAAR did not decide the exemption issue, the remand ensures that the taxpayer receives a fair opportunity to establish eligibility under Entry 41 of Notification No. 12/2017-CT (Rate). This case highlights that it must adopt a balanced and reasoned approach instead of narrow interpretation while dealing with complex GST exemption disputes.

2. ITC RELATED- CENVAT CREDIT

CASE LAW 3

M/S. SUNCRAFT ENERGY PRIVATE LIMITED

VERSUS

THE ASSISTANT COMMISSIONER, STATE TAX, BALLYGUNGE CHARGE AND OTHERS
Supreme Court of India

Petition/Appeal No.	**Relevant Section/Rule**
SLP Appeal(C) Nos. 27827-27828 of 2023	Section 16(2)(c) of the CGST Act 2017

Citation
(2023) 13 Centax 189 (S.C.)

Dated
14.12.2023

Input Tax Credit Cannot Be Denied to a Bona Fide Purchaser Merely Due to Supplier's Default in Filing Returns or Reflection in GSTR-2A

FACTUAL MATRIX

In the instant case, the department issued a show cause notice to the Petitioner alleging wrongful availment of Input Tax Credit (ITC) for FY 2017–18 on account of mismatch between GSTR-3B and GSTR-2A. The Petitioner submitted detailed replies along with documentary evidence establishing compliance with the conditions prescribed under Section 16(2) of the CGST/WBGST Act.

However, the adjudicating authority disallowed the ITC solely on the ground of non-reflection of invoices in GSTR-

2A and confirmed the demand along with interest and penalty under Section 73 of the Act. Aggrieved thereby, the Petitioner filed a writ petition before the Hon'ble Calcutta High Court which came to be dismissed on the ground of availability of an alternative statutory remedy. Then the petitioner approached to the division court which allowed the appeal and set aside the impugned show cause notice/ order. Subsequently, the department preferred a Special Leave Petition before the Hon'ble Supreme Court of India challenging the judgment of the High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court declined to interfere with the judgment under challenge. Consequently, the Special Leave Petitions filed by the Revenue were dismissed.

By virtue of dismissal of the Special Leave Petitions, the judgment of the Hon'ble Calcutta High Court (Division Bench) continued to hold the field between the parties, including the findings that Input Tax Credit could not be denied solely on account of non-reflection of invoices in Form GSTR-2A where the purchasing dealer had otherwise complied with the substantive requirements of Section 16(2) of the CGST Act.

The Hon'ble High Court while admitting the petition elucidated that:

- the appellant had duly complied with all the substantive conditions prescribed under Section 16(2) of the CGST/ WBGST Act by **possessing valid tax invoices, receiving the goods/services, and making payment of consideration inclusive of tax to the supplier.**
- That Forms **GSTR-2A are merely facilitative mechanisms** under the GST regime and non-reflection of invoices therein cannot, by itself, be made a ground for denial of Input Tax Credit.

- reliance placed by the appellant on the judgment of the Hon'ble Supreme Court in **Union of India v. Bharti Airtel Ltd.** was justified, as the Hon'ble Supreme Court had clarified that Form GSTR-2A is not a substantive condition for availment of ITC under the self-assessment scheme of GST.

- the respondent authorities **failed to conduct any enquiry or initiate effective proceedings against the defaulting supplier** before proceeding against the appellant.

- in the **absence of any finding regarding fraud, connivance, collusion, non-existence of supplier, closure of business, or absence of recoverable assets, reversal of ITC against the appellant was arbitrary** and unsustainable in law.

- the adjudicating authority **failed to properly consider the reply and documentary evidence furnished by the appellant,** and mere issuance of a show cause notice without due examination of such materials cannot sustain the proceedings.

- as clarified by the CBIC Press Releases dated 04.05.2018 and 18.10.2018, **recovery proceedings are ordinarily required to be initiated against the defaulting supplier and reversal of ITC from the recipient can only be resorted to in exceptional circumstances.**

Accordingly, the Hon'ble High Court allowed the appeal and set aside the impugned adjudication order dated 20.02.2023, while directing the authorities to first proceed against the supplier before initiating action against the appellant.

OUR COMMENTS

The judgment reinforces the foundational principles of fairness, reasoned adjudication, and substantive compliance under the GST regime. The Hon'ble Court rightly emphasized

that adjudication proceedings cannot be sustained merely on the basis of issuance of a show cause notice without meaningful consideration of the taxpayer's reply and supporting documentary evidence. Such an approach would amount to mechanical adjudication and would be contrary to the principles of natural justice.

The ruling is particularly significant in the context of Input Tax Credit disputes, as it protects bona fide purchasing dealers from being penalized for defaults committed by suppliers over whom they exercise no control.

The judgment also strikes a balance between safeguarding government revenue and protecting legitimate trade by clarifying that recovery proceedings should ordinarily be directed against the defaulting supplier first, and that action against the recipient can be justified only in exceptional circumstances like missing dealer, closure of business by suppliers etc. supported by cogent findings. The decision therefore serves as an important safeguard against arbitrary denial of ITC and mechanical recovery proceedings under the GST framework.

CASE LAW 4

SURYA BUSINESS PVT LTD.

VS

THE STATE OF ASSAM
IN THE HIGH COURT AT GAUHATI

Petition/Appeal No. WP(C)/6322/2023	**Relevant Section/Rule** Section 65 of the CGST Act read with Section 73/74 of the CGST Act 2017.
Citation	
Dated 05.03.2026	

Issuance of a fresh SCN after closure of audit proceedings, without any fresh detection during audit, renders the audit process redundant and unsustainable.

FACTUAL MATRIX

The petitioner is a registered dealer under the CGST and AGST Acts. The GST returns of the petitioner for FY 2017-18 were selected for audit under Section 65 of the GST Act.

Pursuant thereto, the department issued audit observations under Rule 101(4) of the GST Rules. Upon consideration of the detailed reply and clarifications furnished by the petitioner, the department accepted the explanations offered, dropped the substantive objections raised during audit, and determined only an interest liability on account of delayed payment of tax. However, after nearly three months, the department again issued a Show Cause Notice for the same

period, i.e., FY 2017-18, alleging short payment of output tax, and wrongful availment of ITC.

The petitioner challenged the SCN before the Gauhati High Court contending that a complete audit under Section 65 had already been concluded and therefore a fresh SCN for the same subject matter was impermissible.

JUGDMENT/ORDER OF THE AUTHORITY

The Gauhati High Court allowed the writ petition and set aside the Show Cause Notice dated 28.09.2023. The Court held that:

- the audit conducted under Section 65 is a comprehensive verification of turnover, taxes paid, refunds claimed, and ITC availed;
- during the audit proceedings, the petitioner had already furnished explanations and documents regarding both turnover and ITC matters;
- the audit objections were ultimately dropped except for delayed payment of tax, for which interest was levied and duly paid by the petitioner.

Therefore, the department could not again invoke Section 73 on the very same issues and period without the circumstances contemplated under Section 65(7) arising.

The Court also relied upon Instruction No. 13/2023-GST dated 26.12.2023 issued by the Assam GST authorities, which specifically directed that notices generated through IIT Big Data Software should be dropped where audit proceedings had already been completed on the same issues.

Accordingly, the High Court concluded that the impugned SCN was not maintainable in law and quashed the same.

OUR COMMENTS

The judgment assumes considerable significance in the

evolving landscape of GST litigation. The Court has emphatically recognised that an audit conducted under Section 65 of the GST Act is not a mere procedural exercise, but a comprehensive statutory verification encompassing turnover, tax liability, and Input Tax Credit availed by the taxpayer. Once such audit proceedings are concluded, the taxpayer's explanations are accepted, and the determined liability is discharged, the department cannot mechanically reopen the same issues through a fresh Show Cause The decision also highlights judicial disapproval of repetitive and overlapping proceedings generated through automated data analytics systems, particularly where the issues have already been examined during audit.

CASE LAW 5

BASANTA KUMAR SHAW

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE, COMMERCIAL TAXES AND STATE TAX, TAMLUK CHARGE

High Court at Calcutta

Petition/Appeal No. WPA 9820 OF 2022	**Relevant Section/Rule** Rule 86A of the CGST Rules, 2017-Blocking of the Electronic Credit Ledger.
Citation (2024) 15 Centax 166 (Cal.)	
Dated 20.06.2022	

Temporary Restriction of ITC or negative blocking of credit under Rule 86A Permissible, but Liable to Revocation upon Satisfactory Explanation by the Assessee.

FACTUAL MATRIX

The assessee challenged an order passed by the GST authorities under Rule 86A of the CGST Rules, 2017 by negatively blocking the Electronic Credit Ledger of the assessee during the pendency of the adjudication proceedings which effectively prevented the assessee from utilizing the credit for payment of tax liability or claiming refunds.

Aggrieved by the aforesaid order and the action of the department therein, the assessee preferred a Writ Petition before the Hon'ble Calcutta High Court.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court pronounced the following decision:

1. It is the assessee's case that the department proceeded with the impugned action of negative blocking of ITC without first adjudicating upon his reply to the show cause notice, although the record revealed that the assessee himself had taken nearly five months to furnish such reply.

2. The Hon'ble Court disposed of the Writ Petition by directing the concerned officer to expeditiously consider and adjudicate upon the assessee's reply to the impugned show cause notices, preferably within a period of three weeks from the date of communication of the order.

3. The Court further directed that such adjudication be undertaken strictly in accordance with law, by passing a reasoned and speaking order after affording an adequate opportunity of hearing to the assessee or his authorised representative. It was also observed that, should the assessee establish a satisfactory case during the course of such proceedings, the authorities shall take immediate steps towards revocation of the negative blocking of ITC.

OUR COMMENTS

The above decision in stands as a significant affirmation of the wide preventive powers vested in GST authorities under Rule 86A. The Calcutta High Court made it clear that protection of revenue can justify temporary restriction of Input Tax Credit even before final adjudication, provided the action is backed by a genuine "reason to believe."

More importantly, the judgment reflects the changing character of GST litigation in India, where procedural compliance, supplier credibility, and transactional

authenticity have become as crucial as the tax payment itself. The ruling, therefore, serves both as a powerful tool for revenue enforcement and a strong warning to businesses that in the GST regime, compliance failures can carry immediate and far-reaching commercial consequences.

CASE LAW 6

BENGAL BEVERAGES PVT. LTD.

VERSUS

COMMISSIONER OF CGST & CX, HOWRAH
CESTAT, Eastern Bench, Kolkata

Petition/Appeal No.	**Relevant Section/Rule**
Final Order Nos. 75118-75119/KOL/2022	Rule 3 of the Cenvat Credit Rules, 2004 read with Section 3(4) of the Sugar Cess Act, 1982.
Citation	
2022 (381) E.L.T. 84 (Tri. - Kolkata)	
Dated	
24.02.2022	

When the issue regarding eligibility of Cenvat credit on Sugar Cess already stands decided in favour of the assesses, earlier demand notices become infructuous and cannot be sustained in the eyes of law.

PARA 11, PER S/SHRI P.K. CHOUDHARY, MEMBER (J) AND P.V. SUBBA RAO, MEMBER (T)

FACTUAL MATRIX

The Appellant, Bengal Beverages Pvt. Ltd., preferred appeals before the Hon'ble CESTAT, Eastern Bench, Kolkata challenging the Order-in-Appeal dated 02.04.2019 passed by the Commissioner of CGST & CX (Appeals-II), Kolkata whereby the refund claim of Cenvat credit of Sugar Cess was partly allowed to the extent of Rs. 2,97,57,505/- while the balance amount of Rs. 1,69,13,316/- was rejected.

The Appellant was engaged in the manufacture and

clearance of aerated water and fruit-based drinks. Sugar was one of the principal raw materials used in manufacture of the final products and accordingly the Appellant had availed Cenvat credit of Sugar Cess.

Proceedings were initiated against the Appellant vide Show Cause Notice dated 02.01.2018 proposing denial of refund of Cenvat credit of Sugar Cess amounting to Rs. 4,66,70,821/- on the ground that Sugar Cess was not expressly specified under Rule 3 of the Cenvat Credit Rules, 2004. The refund claim was rejected by the Adjudicating Authority.

Aggrieved thereby, the Appellant preferred an appeal before the First Appellate Authority which partly allowed the refund claim while rejecting the balance amount on the ground that a separate Show Cause Notice dated 21.08.2015 for the period August 2014 to June 2015 was pending adjudication.

The Appellant contended that the issue regarding admissibility of Cenvat credit on Sugar Cess already stood settled in favour of the assessee by the judgment of the Hon'ble Karnataka High Court in Commissioner v. Shree Renuka Sugars Ltd., which had attained finality upon dismissal of the Revenue's appeal by the Hon'ble Supreme Court.

The Revenue, however, relied upon the judgment of the Hon'ble Supreme Court in Unicorn Industries v. Union of India contending that refund of cess was not admissible.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Tribunal held that -

1. The issue regarding admissibility of Cenvat credit on Sugar Cess already stood settled in favour of the assessee by the Karnataka High Court in Commissioner v. Shree Renuka Sugars Ltd.

2. It was observed that the said judgment had attained finality upon dismissal of the Revenue's appeal by the Hon'ble Supreme Court.

3. The Tribunal held that the judgment in Unicorn Industries v. Union of India relied upon by the Revenue was distinguishable on facts.

4. The Hon'ble Tribunal observed that once the issue regarding admissibility of Cenvat credit on Sugar Cess had already been decided in favour of the assessee, the earlier demand notices became infructuous and could not be sustained in the eyes of law.

5. It was further held that two demand notices for the same period and same issue could not survive simultaneously.

6. The Tribunal emphasized that binding precedents of higher judicial forums are required to be followed by lower authorities in accordance with principles of judicial discipline.

Accordingly, the Hon'ble Tribunal allowed the appeal filed by the assessee with consequential reliefs as per law and dismissed the departmental appeal

OUR COMMENTS

The present decision is a significant reiteration of the settled principles governing judicial discipline and consistency in tax adjudication. The ruling reinforces that settled legal positions cannot be ignored by adjudicating authorities merely because separate proceedings are pending for the same period and issue.

The decision further emphasizes that lower authorities are bound to follow binding precedents of higher judicial forums while adjudicating disputes under indirect tax laws. By relying upon the CBIC instruction relating to judicial discipline, the Hon'ble Tribunal highlighted the necessity of maintaining uniformity and certainty in tax administration. The ruling also safeguards taxpayers from multiplicity of proceedings and repetitive demands on issues that already stand conclusively settled by competent judicial authorities.

CASE LAW 7

RADHA MOHAN PURSHOTTAM DAS AGARWAL

VERSUS

THE ASSISTANT COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. MAT 1955 OF 2023	**Relevant Section/Rule** Section 140 of the CGST Act, 2017- Transitional Credit
Citation (2024) 15 Centax 98 (Cal.)	
Dated 24.11.2023	

Restoration of VAT Registration Nullifies Basis for Denial of Transitional Credit

FACTUAL MATRIX

In the present case, the VAT registration of the assessee was retrospectively cancelled under the pre-GST regime. The cancellation had severe consequences because GST transitional provisions under Section 140 of the CGST Act, 2017 permit carry-forward of input tax credit only if certain statutory compliances are fulfilled. Once the VAT registration stood cancelled retrospectively, the assessee became incapable of filing returns in the ordinary course and consequently faced denial of transitional credit.

Earlier, the assessee had already approached the Hon'ble Calcutta High Court in another proceeding, where the Court directed reconsideration of the restoration application filed

by the assessee pertaining to the cancellation of the VAT registration. Pursuant to those directions, the Adjudicating Authority eventually restored the VAT registration retrospectively and thus a consequence of such restoration would be that the assessee would be entitled to the transitional credit.

Then, department-initiated proceedings against the assessee by issuing a show cause notice, which ultimately culminated in a demand order alleging that the assessee was ineligible to avail transitional credit for failure to furnish returns for six months immediately preceding the appointed date.

Therefore, the assessee approached the Hon'ble Court wherein the Hon'ble Single Bench declined to grant any interim order, post which, the assessee preferred an Appeal before the Hon'ble Division Bench of the Hon'ble Calcutta High Court.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court made the following significant observations:

1. Despite taking note of the aforesaid position, the Authority concluded that manual submission of statements in the nature of returns could not be treated as valid returns. Such finding, as recorded in the order, was held to be wholly illegal and founded upon an erroneous understanding of the legal position.

2. The Authority, by issuing the show cause notice, sought to reopen an issue which had already attained its finality and was settled upon restoration of the VAT registration, an exercise which the Authority was not entitled to, and which was impermissible in law.

3. Consequently, it was held that the assessee was entitled to transitional credit and that the adjudication order was entirely without jurisdiction and unsustainable in law.

OUR COMMENTS

Section 140 of the CGST Act, 2017 allows a registered taxpayer to carry forward Cenvat credit accumulated under the previous tax laws into the GST regime. Registered taxpayers can transition their closing credit balances if, (a) the credit is admissible under GST, (b) all returns for the six months preceding the appointed day have been filed and (c) none of the credit pertains to goods cleared under exemption notifications.

The decision affirms that retrospective restoration of VAT registration revives the assessee's substantive entitlement to transitional credit, particularly where statutory compliance was maintained through manual filing of returns, thereby preventing denial of credit on mere technical or procedural grounds. The decision therefore serves as an important precedent in safeguarding taxpayers against arbitrary reassessment and legally unsustainable denial of transitional credit under the GST framework.

CASE LAW 8

ADHIRAJ DISTRIBUTORS LTD.

VERSUS

THE ADDITIONAL COMMISSIONER OF REVENUE, GOVT. OF WEST BENGAL
Hight Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No.14737 of 2024	Section 16(4) read with Section 73 of the CGST/ WBGST Act, 2017 – relating to time limit for availing ITC and its disallowance/recovery proceedings.
Citation	
(2024) 22 Centax 278 (Cal.)	
Dated	
29.07.2024	

Since the petitioners had filed Form 3B for the Tax period 2018-2019, belatedly but before 30th November, 2021, I am of the view that the petitioners having made out a prima facie case are entitled to an interim order, as the finance bill no.2 of 2024 takes care of a major part of the determination made under Section73 of the said Act for the Financial Year 2018 19.

— PARA 7 - RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The assessee, *Adhiraj Distributors Ltd.*, was subjected to proceedings under Section 73 of the CGST/WBGST Act, 2017 for the financial years 2017–18 to 2020–21. It was observed that the assessee had availed Input Tax Credit (ITC) through GSTR-3B returns filed beyond the time limit prescribed under Section 16(4) of the Act.

For the financial year 2018–19, the return was filed on 23rd October 2019 as against the due date of 20th October 2019, due to which ITC of approximately Rs.3.96 crore was treated as time-barred. Consequently, a show cause notice was issued and an order under Section 73(9) was passed disallowing the ITC.

Aggrieved, the assessee filed a writ petition before the Hon'ble Calcutta High Court. The assessee relied on the Finance Bill, 2024, which proposed to relax Section 16(4) by allowing ITC in respect of returns filed up to 30th November 2021 for the financial years 2017–18 to 2020–21. Since the returns were filed within this extended period, the assessee contended that the denial of ITC was unjustified and sought protection against recovery proceedings.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court observed that the assessee had established a prima facie case, particularly in view of the proposed amendment under the Finance Bill, 2024, which seeks to allow Input Tax Credit for returns filed up to 30th November 2021. The Court noted that although the amendment had not yet been enacted, it clearly reflected the legislative intent to grant relief in such situations.

Considering this, the Court held that the assessee was entitled to interim protection. However, since the amendment was still pending, the Court directed the assessee to deposit a sum of ₹ 25 lakh as a condition. Upon such deposit, the Court restrained the department from taking any coercive action against the assessee and allowed the interim relief to continue until further orders.

OUR COMMENTS

This decision reflects a notable judicial stance where the Hon'ble Calcutta High Court chose to uphold the intent of the Government rather than the strict letter of the law as it then stood. Although Section 16(4) of the CGST Act, 2017

clearly barred ITC on returns filed beyond the prescribed date, the Court relied on the proposed Finance (No. 2) Bill, 2024 (later enacted as Section 16(5)) and held that the assessee had a strong prima facie case. At the same time, since the Bill was yet to become law, the Court adopted a balanced approach by directing the assessee to deposit Rs.25 lakh as a condition for interim protection thereby safeguarding the Revenue while granting relief. The ruling is a useful precedent that genuine ITC should not be denied on a mere technical delay, and that legislative intent, even at the Bill stage, can guide judicial relief.

CASE LAW 9

ADHIRAJ DISTRIBUTORS LTD

VERSUS

ADDITIONAL COMMISSIONER OF REVENUE, CHOWRINGHEE CIRCLE

High Court at Calcutta

Petition/Appeal No. M.A.T. No. 693 of 2025 and I.A. Nos. Can 1 & 2 of 2025	**Relevant Section/Rule** Section 16(4), Section 16(5), Section 39, Section 73, Section 74, Section 107, Section 108 and Section 168A of the CGST Act, along with Notification No. 22/2024-C.T.
Citation (2025) 31 Centax 391 (Cal.)	
Dated 21.05.2025	

Taking note of the fact that the statute has been amended by insertion of sub-section (5) to Section 16, we are of the view that the show-cause notice should re-adjudicated.

— PARA 13

FACTUAL MATRIX

The petitioner, Adhiraj Distributors Ltd., challenged a GST adjudication order passed against it for allegedly availing Input Tax Credit (ITC) beyond the time limit prescribed under Section 16(4) of the CGST Act. During the pendency of the case, Section 16(5) was inserted through the Finance (No. 2) Act, 2024, giving relief for ITC relating to FY 2017-18 to 2020-21. The assessee argued that this new provision should be

considered while deciding the dispute. The Court noted that Notification No. 22/2024-C.T. also provided a special procedure for rectification of such cases. Therefore, the High Court set aside the earlier adjudication order and remanded the matter for fresh adjudication in light of the amended law.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

The Calcutta High Court held that the newly inserted Section 16(5) of the CGST Act provides relief to taxpayers for availing ITC relating to FY 2017-18 to 2020-21. Therefore, the benefit of the amended provision had to be considered in the present case.The Court observed that Notification No. 22/2024-C.T. introduced a special procedure for rectification of orders where ITC was denied due to violation of Section 16(4). Hence, the assessee was entitled to seek reconsideration of the dispute. The adjudication order dated 22 January 2024 was set aside and the show cause notice was restored to the adjudicating authority for fresh adjudication in accordance with the amended law. The Court directed the adjudicating authority to provide the assessee an additional opportunity to file a reply and grant a personal hearing before passing a fresh order. It also ordered refund of the Rs.25 lakh deposited by the assessee.

OUR COMMENTS

The insertion of Section 16(5) by the Finance (No. 2) Act, 2024 has effectively buried the Section 16(4) controversy that plagued thousands of assessees during the initial GST years. The Calcutta High Court's approach of remanding the matter for re-adjudication — rather than burdening the assessee with further appellate rounds — reflects judicial pragmatism at its finest and aligns with the Delhi and Jharkhand HC view. Read with Notification No. 22/2024-CT, this judgment offers a complete roadmap for assessees stuck at any stage — SCN, adjudication, appeal, or writ.

CASE LAW 10

ANJITA DOKANIA

VERSUS

STATE TAX OFFICER (GST), BUREAU OF INVESTIGATION (SOUTH BENGAL), DURGAPUR ZONE
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 23839 of 2024	Section 67 , Rule 86A(3)

Citation
(2026) 38 Centax 261 (Cal.)

Dated
07.01.2026

The Rule reads in mandatory terms and leaves no room for any confusion that the restriction would cease after one year from the date of its imposition.

— PARA 13, PER OM NARAYAN RAI, J.

FACTUAL MATRIX

The GST authorities conducted a search operation under Section 67 of the CGST/WBGST Act against the petitioner and subsequently blocked Electronic Credit Ledger by invoking Rule 86A of the CGST Rules. The petitioner approached the Calcutta High Court contending that the blockage of the ECL had continued beyond the statutory period of one year prescribed under Rule 86A (3), making the action illegal. The petitioner further challenged the validity of the search proceedings by alleging absence of

proper "reasons to believe" for the second search operation and submitted the adjudicating authority in the case at hand being an officer of the Bureau of Investigation officer to adjudicate proceedings under Section 74.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

Rule 86A (3) of the CGST Rules clearly provides that blockage of the Electronic Credit Ledger (ECL) shall cease after expiry of one year from the date of restriction.

The Court observed that since the petitioner's ECL had been blocked from 9 November 2023, continuation of the restriction beyond one year was illegal and contrary to the statutory provision.

Accordingly, the Court directed the GST authorities to forthwith unblock the petitioner's Electronic Credit Ledger.

The Court also noted that similar writ petitions challenging the jurisdiction of Bureau of Investigation officers had already been entertained earlier and therefore restrained the department from taking any coercive action against the petitioner till returnable date.

The Court also directed the GST department to file an affidavit clarifying and justifying the legality of the search proceedings conducted against the petitioner. The department was specifically asked to explain whether proper "reasons to believe," as required under Section 67 of the CGST Act, existed before conducting the search operations, and to clarify the jurisdiction.

OUR COMMENTS

The judgment is significant as it reinforces that powers under Rule 86A are temporary and cannot be used by GST authorities as an indefinite punitive measure. The Calcutta High Court rightly emphasized that once the statutory

period of one year expires, the blockage of the Electronic Credit Ledger must automatically cease, thereby protecting taxpayers from prolonged restrictions without express legal backing.

CASE LAW 11

COMMISSIONER OF CGST & CENTRAL EXCISE, HOWRAH COMMISSIONERATE

VERSUS

BENGAL BEVERAGES PVT. LTD.
High Court at Calcutta.

Petition/Appeal No.	**Relevant Section/Rule**
CEXA No. 18 of 2022	Rule 3 of Cenvat Credit Rules, 2004; Section 3 of Sugar Cess Act, 1982
Citation	
(2025) 33 Centax 373 (Cal.)	
Dated	
21-05-2025	

Sugar cess is duty of Excise, therefore, assessee was entitled to Cenvat Credit.

FACTUAL MATRIX

In the instant case, the Revenue Authorities approached the Hon'ble Division Bench of the Hon'ble Calcutta High Court challenging the order of the Hon'ble CESTAT Kolkata wherein the judicial forum had ruled in favour of the assessee that Cenvat Credit can be availed on duty paid under the Sugar Cess Act, 1982.

The assessee has availed Cenvat Credit on the payment of cess u/s 3(4) of the Sugar Cess Act, 1982 which the department has disallowed having the reasoning that cess levied and collected under the Sugar Cess Act, 1982 does not partake the character of a duty of excise and hence is not

entitled to the benefit of Cenvat Credit.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while placing reliance upon the judgment in the case of **Commissioner of Central Excise, Customs and Service Tax, Belgaum v. Shree Renuka Sugars Ltd**. highlighted the following points in pronouncing its decision:

- The first and foremost question for consideration was whether tax paid under the Sugar Cess Act, 1982 is to be treated as a tax or fee which the Court has taken the view of treating the same to **be a tax** and precisely an excise duty and not to be a fee. The Court held that the traditional concept of strict quid pro quo for a fee has evolved over time. Since the cess collected under the Act are credited to the Consolidated Fund of India and utilized for public purposes, there is no direct quid pro quo between the levy and the services rendered. Therefore, the contention that "cess levied under the given Act is a fee and that the assessee has no right to avail Cenvat Credit on such cess holds" no substance.

- The subsequent point of consideration raised was that in order to be eligible for availment of Cenvat credit, is it necessary that the Act should have any enshrinement in Rule 3 of the Cenvat Credit Rules, 2004. **The Hon'ble Court, in this regard, held that excise duty is leviable under the Central Excise Act as well as the Sugar Cess Act, 1982**.

- It was further held by the Court that the statutory provision of Section 3 of the Act in question provides for levy and collection as a cess for the purpose of Sugar Development Fund Act, 1982, which is a **duty of excise** on all sugar produced by any sugar factory in India and hence the cess leviable and collected is at the very stage of production of sugar in the sugar factory. Since it is a tax on production, it is described as a **duty of excise**.

Consequently, the substantial questions of law were answered against the revenue, and the Tribunal's decision in favor of the assessee was upheld.

OUR COMMENTS

This judgment provides crucial clarity on the legal character of cesses levied under specific acts, reaffirming that when proceeds are credited to the Consolidated Fund of India without a direct quid pro quo, they possess the character of a tax or duty of excise rather than a fee. By upholding the assessee's right to claim Cenvat Credit on sugar cess despite its absence from the explicit list in Rule 3 of the Cenvat Credit Rules, the Calcutta High Court has reinforced a substantive interpretation of the law over strict procedural limitations. Furthermore, this decision underscores the enduring validity of High Court precedents when Supreme Court appeals are dismissed purely on monetary limits, securing the Cenvat Credit rights of manufacturers in similar tax disputes.

CASE LAW 12

CART INFRALOG LTD.

VERSUS

ASSISTANT COMMISSIONER OF CGST & CX, BALLYGUNGE DIVISION
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No.15304 of 2024	Section 16(4) read with Section 73 of Central Goods and Services Act, 2017/West Bengal Goods and Services Act, 2017
Citation	
(2024) 21 Centax 553 (Cal.)	
Dated	
29.07.2024	

"…I am of the view that the Petitioners at this stage is entitled to an interim order, as the finance bill no.2 of 2024 takes care of a major part of the determination made under Section 73 of the said Act for the Financial Year 2018-19. Such interim order is necessary to avoid multiplicity of judicial proceedings."

— PARA 7, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner challenged an adjudication order passed under Section 73(9) of the CGST/WBGST Act disallowing ITC of approximately Rs. 63.28 lakh for FY 2018–19 on the ground that the relevant GSTR-3B returns were filed after the due date prescribed under Section 16(4).

The Petitioner contended that the proposed amendment under the Finance (No. 2) Bill, 2024 extending the time limit

for availing ITC for FY 2017–18 to 2020–21 up to 30 November 2021 would validate its claim, as the returns had been filed within the extended period. The respondents argued that the amendment had not yet attained statutory force and that the adjudication order was otherwise appealable.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court observed that the proposed amendment under the Finance (No. 2) Bill, 2024 to Section 16(4) substantially addressed the basis on which the adjudication under Section 73 had been made, since the Petitioner had filed the relevant GSTR-3B returns before 30 November 2021 and therefore the matter warranted judicial consideration at the interim stage.

The Hon'ble Calcutta High Court held that –

1. In light of the proposed legislative amendment, interim protection was necessary to prevent multiplicity of proceedings and to safeguard the interests of the Petitioner during the pendency of the matter.

2. Conditional protection was granted, subject to the Petitioner depositing Rs. 25 lakhs with the Registrar General within the stipulated time. It ordered that upon compliance with the deposit condition, the amount be kept in an interest-bearing fixed deposit until further orders of the Court.

3. An order was passed restraining the respondent authorities from taking any coercive steps for enforcement of the impugned adjudication order. It further clarified that such interim protection would continue for a specified period or until further orders, subject to the Petitioner complying with the conditions imposed, including the deposit directed by the Court.

OUR COMMENTS

This decision reflects a pragmatic and forward-looking approach adopted by the Court in tax litigation, particularly in situations where legislative intent is in transition. By taking note of the proposed amendment under the Finance (No. 2) Bill, 2024, the Court effectively acknowledged that rigid enforcement of existing provisions may lead to unjust outcomes, especially when the legislature itself seeks to relax such conditions retrospectively.

Further, the order underscores the importance of balancing revenue interests with taxpayer protection, as seen from the conditional interim relief. The requirement of partial deposit, coupled with restraint on coercive recovery, ensures that the interests of both parties remain protected. The ruling also signals that courts may increasingly consider pending legislative changes as a relevant factor in granting interim relief, thereby reducing avoidable litigation and hardship for taxpayers.

CASE LAW 13

ASIAN HOTELS (EAST) LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. W.P. No.13542 of 2024	**Relevant Section/Rule** Section 16(2)(a) and Section 73(9) of the CGST Act, 2017, read with MoF Press Release dated 04.05.2018.
Citation (2024) 21 Centax 44 (Cal.)	
Dated 27.06.2024	

By placing reliance on a press release dated 4 th May, 2018, issued by the Ministry of Finance, it is submitted that it has been clarified that there shall be no automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller, however, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets, etc.

— PARA 6, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, **Asian Hotels (East) Ltd.,** had claimed **Input Tax Credit (ITC)** for the financial year 2018–19 in the normal course of its business. The credit was taken on purchases made from a registered supplier, **M/s Crystolyte Facility Management Pvt. Ltd.**, and at that time, the transactions

were genuine and properly recorded.

Subsequently, the GST department passed an order dated 30 March 2024 under **Section 73(9)** of the CGST/WBGST Act and raised a demand against the Petitioner. The department alleged that the ITC was wrongly availed under **Section 16(2)(a)** on the ground that the supplier had later **closed its business.**

Aggrieved by this action, the Petitioner filed a writ petition before the Hon'ble Calcutta High Court. The Petitioner submitted that the supplier's registration was cancelled only later, with effect from 6 April 2021, and that the supplier had duly filed its GST returns for the relevant period of 2018–19.

The Petitioner further relied on the **Press Release issued by the Ministry of Finance dated 4 May 2018,** which clarified that there should be **no automatic reversal of ITC from the buyer due to non-payment of tax by the seller,** and that recovery should primarily be made from the supplier.

It was argued that at the time of the transactions, the supplier was active and compliant, and therefore, the ITC was validly claimed. The Petitioner also contended that the subsequent closure of the supplier's business cannot be a valid ground to deny credit to a bona fide purchaser.

Being aggrieved by the demand raised by the department, the Petitioner approached the High Court seeking appropriate relief.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court at Calcutta, after hearing both the parties and examining the records placed before it, observed that the Petitioner had made out a **prima facie case** in its favour. Further, The Court took note of the fact that the supplier, **M/s Crystolyte Facility Management Pvt. Ltd.**, had filed its GST returns for the relevant period of 2018–19, which indicated that the supplier was compliant with the provisions of the GST law at the time when the transactions were carried out.

The Court further observed that the supplier's registration was cancelled only later, i.e., with effect from 6 April 2021, and therefore, such subsequent closure of business cannot automatically lead to denial of Input Tax Credit to the Petitioner.

Reliance was also placed on the clarification issued by the Ministry of Finance, which states that there should be **no automatic reversal of ITC from the buyer** on account of non-payment of tax by the seller, and that recovery should first be made from the supplier.

The Court noted that in the present case, the department had **not taken any effective steps to recover the tax from the supplier,** and had directly proceeded against the Petitioner without establishing any exceptional circumstances such as fraud, fake transactions, or absence of goods/services.

In light of these facts, the Court held that the action of the department appeared to be **prima facie unsustainable,** and the Petitioner was entitled to interim protection.

Accordingly, the Court directed that the **demand raised by the department shall remain stayed,** subject to the condition that the Petitioner deposits **10% of the disputed tax amount** within the prescribed time. The Court further ordered that upon such deposit, the interim protection shall continue till the next date of hearing or until further orders, and the matter was directed to be listed for further consideration.

OUR COMMENTS

This case deals with a common issue in GST where ITC is denied because of the supplier's problem. In this case, the Petitioner had done everything correctly at the time of taking ITC and had proper documents. So, denying ITC just because the supplier later closed its business does not seem fair. The Court's view that ITC should not be automatically reversed in such situations is practical and reasonable.

CASE LAW 14

M/S JYOTI TAR PRODUCTS PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER, STATE TAX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 2291 of 2024 and I.A. No. Can 1 of 2024	Section 74 of the CGST Act, 2017 / WBGST Act, 2017 – Validity of show cause notice – Non-consideration of reply furnished against intimation issued under Section 74(5)
Citation (2025) 26 Centax 376 (Cal.)	
Dated 21.01.2025	

when the authority has thought fit to exercise its powers under Section 74(5), he is enjoined upon a duty to consider the reply before it takes a decision to issue a show-cause notice under Section 74(1) of the Act.

— PARA 6, PER T.S. SIVAGNANAM, C.J. & HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

Prior to issuance of the show cause notice under Section 74(1) of the GST Act, the Department had issued an intimation under Section 74(5) alleging wrongful availment of Input Tax Credit from non-existing entities. The Assessee submitted a detailed reply along with supporting documents and relied upon judicial precedents in response to the said intimation.

However, without considering the reply and submissions made by the Petitioner, the Adjudicating Authority

proceeded to issue a show cause notice stating that the reply was found unsatisfactory and the subsequent show cause notice issued under Section 74(1) was merely a reproduction of the earlier intimation where the department did not deal with the explanations or contentions raised by the Assessee in its reply.

The Petitioner therefore challenged the validity of the show cause notice on the ground of non-consideration of its reply and violation of principles of natural justice.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Division Bench of Calcutta High Court while admitting the petition observed that the show cause notice issued was a mere replication of the earlier tax intimation without considering the detailed reply submitted by the Petitioner.

The Hon'ble High Court further emphasized that before issuing an SCN, the assessing authority must evaluate the taxpayer's response and provide a reasoned decision.

Accordingly, the order passed by the Hon'ble Single Bench in earlier Writ Petition was set-aside and the matter was remanded back to the Adjudicating Authority to consider the reply submitted by the Petitioner.

OUR COMMENTS

This case rightly upholds the principles of natural justice by emphasizing the necessity for a reasoned adjudication process.

By setting aside the SCN and remanding the matter back, the Court has reinforced that tax authorities cannot mechanically issue notices without duly considering the taxpayer's response.

This ruling serves as an important precedent, ensuring that procedural fairness is maintained and that taxpayers are not subjected to arbitrary demands without proper justification.

CASE LAW 15

M/S KAMDHENU UDYOG PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF REVENUE, BHABANIPUR CHARGE

High Court at Calcutta

Petition/Appeal No. W.P.A. No. 9957 of 2025	**Relevant Section/Rule** Sections 17, 39 and 73 of the CGST/WBGST Act, 2017 – Wrong availment of ITC and correction of inadvertent error in Form GST DRC-03.
Citation (2025) 32 Centax 9 (Cal.)	
Dated 12.06.2025	

This is not a case of evasion of tax but a case of wrongful availment of ITC by the petitioners which had later voluntarily been reversed by the petitioners.

— PARA 8, PER RAJA BASU CHOWDHURY.

FACTUAL MATRIX

The petitioner, Kamdhenu Udyog Pvt. Ltd., engaged in the business of manufacturing poultry feed, had wrongly availed Input Tax Credit (ITC) for the period July 2017 to March 2018 under the CGST/WBGST Act, though such ITC was never utilised. Upon detection by the Anti-Evasion Wing, the petitioner voluntarily reversed the entire ITC through Form GST DRC-03; however, due to an error, the relevant tax period was not correctly reflected in the DRC-03 forms. Despite acknowledging that the ITC had been fully reversed, the Proper Officer passed an order under Section 73 and the

Appellate Authority also rejected the appeal on technical grounds. Aggrieved by the same, the petitioner approached the Calcutta High Court, which held that the case involved wrongful availment and not tax evasion, and therefore the procedural error in DRC-03 should be allowed to be corrected. Accordingly, the impugned orders were set aside and the matter was remanded for fresh adjudication.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The Hon'ble Court prima facie found no intent of tax evasion but acknowledged a genuine and voluntary attempt by the petitioners to correct their mistake and cited that both the adjudicating authority and the appellate authority acknowledged the reversal of ITC but refused relief on technical grounds.

2. The Court held that the authorities acted unfairly by denying the benefit of reversal due to minor procedural lapse and remanded the matter back to the proper officer for fresh adjudication with directions to consider the substantive compliance and genuine intent of the petitioners.

OUR COMMENTS

This ruling reaffirms a growing trend in GST jurisprudence—substance over form. It reinforces that minor technical errors should not override bona fide tax compliance, particularly when no revenue loss has occurred. Mere procedural lapse cannot deny substantive benefit. It reflects a pragmatic and taxpayer-friendly approach by holding that procedural or technical errors should not defeat substantive justice, particularly when there is no allegation of tax evasion or wrongful utilisation of ITC.

CASE LAW 16

M/S DIAMOND BEVERAGES PVT. LTD.

VERSUS

The ASSISTANT COMMISSIONER OF CGST & CX, TALTALA DIVISION-II
High Court at Calcutta

Petition/Appeal No. M.A.T. No. 1948 of 2023 with I.A. No. CAN 1 of 2023 **Citation** (2023) 13 Centax 243 (Cal.) **Dated** 15.12.2023	**Relevant Section/Rule** Section 73 of the CGST/ WBGST Act, 2017 – Show cause notice issued without application of mind and without investigation at supplier's end.

"The show cause notice dated 16th August, 2023 has been issued without due application of mind."

— PARA 6, PER T.S. SIVAGNANAM, J.

FACTUAL MATRIX

The Department alleged that the Appellant had wrongly availed and utilized ITC during FY 2018-19 on supplies received from dealers whose registrations were retrospectively cancelled and from suppliers who had not filed GSTR-3B returns.

The Appellant furnished detailed replies to the discrepancy notices as well as the pre-show cause notice in Form GST DRC-01A and requested investigation at the supplier's end

along with an opportunity of personal hearing.

However, without conducting any inquiry or investigation and without properly dealing with the Appellant's contentions, the Department issued a show cause notice under Section 73(1) of the CGST Act.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. Although the impugned show cause notice reproduced the Appellant's reply, the Authority had not actually considered or dealt with the specific contentions raised therein.

2. The allegations involved issues relating to suppliers' registrations and filing of returns and therefore required proper inquiry and investigation at the supplier's end before issuance of a show cause notice under Section 73(1).

3. Issuance of the show cause notice without conducting any investigation and without due application of mind rendered the notice unsustainable in law.

4. Accordingly, the show cause notice dated 16.08.2023 was set aside and the matter was remanded back to the adjudicating authority to conduct proper inquiry/ investigation, grant opportunity of hearing and thereafter decide whether issuance of notice under Section 73(1) was warranted.

OUR COMMENTS

This judgment reinforces that GST proceedings cannot be initiated mechanically merely by reproducing allegations or replies submitted by taxpayers. The Department is required to independently examine the taxpayer's submissions and conduct proper inquiry, especially where allegations relate to supplier defaults or retrospective cancellation of supplier registrations.

The ruling also strengthens the principle of procedural fairness by emphasizing that investigation at the supplier's end and meaningful consideration of replies are essential before initiating adjudication proceedings under Section 73 of the GST Act.

The ruling emphasizes fair inquiry, proper reasoning, and procedural compliance, strengthening taxpayers' protections against arbitrary tax enforcement upholding the principal of Natural Justice.

CASE LAW 17

M/S JYOTI TAR PRODUCTS PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER, STATE TAX, SHIBPUR CHARGE

In the High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT No. 2100 of 2024 and IA No: Can/1 of 2024	Section 16 of the CGST/ WBGST Act, 2017 – Denial of ITC on account of retrospective cancellation of supplier registration.
Citation (2025) 26 Centax 444 (Cal.)	
Dated 14.01.2025	

"Two major issues had to be considered by the adjudicating authority, namely, the effect of retrospective cancellation of the registration of the suppliers and the aspect as to whether the purchaser/appellants have proved movement of goods."

— PARA 21, PER T.S. SIVAGNANAM, C.J. & HIRANMAY BHATTACHARYA, J.

FACTUAL MATRIX

The Department alleged that the Appellant had wrongly availed ITC on purchases made from suppliers whose GST registrations were subsequently cancelled retrospectively. Proceedings were initiated under Section 74 of the CGST/WBGST Act alleging receipt of supplies from non-existent dealers.

The Appellant contended that the suppliers' registrations were valid and active at the time of transactions and further

furnished tax invoices, e-way bills, kata slips, bank statements and ledger accounts to establish genuineness of purchases and movement of goods. However, despite the submissions made by the Petitioner, the adjudicating authority, without considering the reply furnished, confirmed the demand.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The adjudicating authority failed to examine the legal effect of retrospective cancellation of supplier registration on the purchasing dealer's entitlement to ITC.

2. The authority also failed to properly consider whether the Appellant had established actual movement of goods through documentary evidence such as invoices, e-way bills, bank statements and ledger extracts.

3. The Court observed that ruled that Input Tax Credit (ITC) cannot be denied solely due to the retrospective cancellation of a supplier's GST registration, provided the buyer complied with Section 16(2) of the CGST Act, 2017.

4. The court held that ITC remains valid if the supplier's registration was active at the time of purchase, and the purchaser possessed valid tax invoices, made payments through banking channels, and ensured tax was deposited with the government. The adjudicating authority's failure to consider key evidence, such as invoices, e-way bills, and bank statements, was deemed a serious procedural lapse.

Accordingly, the Hon'ble Division Bench set aside the order passed by the Single Judge as well as the adjudication order under Section 74 and remanded the matter back to the adjudicating authority for fresh adjudication after granting opportunity of hearing to the Appellant and directed the Petitioner to furnish a fresh reply.

OUR COMMENTS

The judgment emphasizes procedural fairness in GST adjudication, stating that retrospective cancellation of a supplier's registration should not bar ITC claims if statutory conditions under Section 16(2) are met. If the recipient can prove the genuineness of the supply received from its supplier, the onus shall lie on the defaulting supplier to make the payment of tax.

The ruling also highlights the importance of examining documentary evidence establishing actual movement of goods and bona fide nature of transactions before concluding that purchases were fictitious or non-genuine.

The decision thus provides significant protection to genuine purchasers against automatic denial of ITC arising solely from subsequent defaults or cancellation of registration of suppliers.

CASE LAW 18

M/S MCLEOD RUSSEL INDIA LIMITED

VERSUS

THE UNION OF INDIA & ORS.
High Court at Gauhati

Petition/Appeal No.	**Relevant Section/Rule**
WP(C) Nos. 5725 of 2022	Section 16(2)(aa) of the CGST Act, 2017
Citation	
TS-995-HC(GAUH)-2025-GST	
Dated	
09.12.2025	

…the conditions are that the GSTR-2 Form should reflect the payment of tax/invoice, which may or may not have been paid or correctly uploaded. Merely because of this, the ITC benefit to a bona fide buyer cannot be avoided as that would be against the object and purpose of the Act itself.

— PARA 19, PER MR. ASHUTOSH KUMAR, C.J. AND MR. ARUN DEV CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, M/s. Mcleod Russel India Limited, moved a writ petition before the Hon'ble Gauhati High Court challenging the constitutional validity and practical fairness of Section 16(2)(aa) of the CGST Act, 2017.

The contentions placed by the Petitioner were that Section 16(2)(aa) makes the availment of Input Tax Credit (ITC) conditional upon the supplier furnishing invoice or debit

note details in Form GSTR-1, and such details being communicated to the recipient in the manner prescribed under Section 37 of the CGST Act. However, Section 37 does not provide for any statutory mechanism enabling such communication by the supplier to the recipient, thereby rendering compliance by the recipient practically impossible.

Further, the provision unfairly restricts ITC of a bona fide recipient due to the supplier's failure to file Form GSTR-1 or to correctly report invoice details therein, even though the recipient has no control over the supplier's statutory compliances.

It was also highlighted that the suppliers may default in filing Form GSTR-1 for various reasons. Such defaults place an onerous and unreasonable burden on recipients to verify supplier compliance and ensure auto-population of invoices in Form GSTR-2A / GSTR-2B, which is beyond the recipient's control.

Thus, the Petitioner has been constrained in absence of any legal mechanism under the GST law enabling the purchasing dealer to initiate corrective action against a non-compliant supplier for non-disclosure of invoices in Form GSTR-1, despite having paid the full consideration along with GST.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed that while it is a well settled legal principle that an assessee who is claiming any exemption or concession must establish his entitlement, however, the provisions of Section 16(2)(aa) imposes an additional condition on such exemption or concession, which is, compliance by the supplier over which the recipient has no actual control.

The Hon'ble High Court held that denial of Input Tax Credit to a bona fide recipient solely on account of supplier default would be contrary to the object and purpose of the GST law, particularly where the recipient has acted in good faith.

While acknowledging that the legislative intent behind the amendment was to curb fraudulent ITC claims and improve supplier compliance, the Hon'ble Court read down Section 16(2)(aa) to the extent that before denying ITC on account of non-compliance by the supplier, the recipient must be afforded an opportunity to establish the genuineness of the transaction through tax invoices and other supporting documents.

The Court further clarified that such interpretation shall operate until the CBIC prescribes a practical and effective mechanism that does not render a recipient's ITC entitlement entirely dependent on supplier-side compliance.

OUR COMMENTS

This is a significant judgment that ensures that ITC cannot be denied to bona-fide purchasers merely due to the default of the supplier thereby, ensuring that a genuine taxpayer who has received the goods or services, holds a valid tax invoice, and has paid the consideration along with applicable tax, must be given a fair opportunity to establish the genuineness of the transaction before ITC is denied. This decision provides much needed relief and guidance to bona fide taxpayers facing ITC mismatch disputes, until a robust and practical mechanism is introduced by CBIC to address suppliers' defaults.

The judgment reaffirms that the honest taxpayers should not be penalized for defaults committed by others. Thereby, protecting the innocent taxpayers against the burden of double taxation and unjust denial of ITC.

CASE LAW 19

HALDIA NIRMAN PROJECT PVT. LTD.

VERSUS

THE ADDITIONAL COMMISSIONER OF CGST & CX, HALDIA COMMISSIONERATE

High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 10162 of 2024	Section73/74

Citation
(2024) 19 Centax 83 (Cal.)

Dated
13.05.2024

The correctness of the aforesaid findings and the sufficiency/proof of such allegations cannot be called in question by the petitioners by invoking the extraordinary writ jurisdiction of this Hon'ble Court.

— PARA7, PER RAJA BASU CHOWDHURY., J.

FACTUAL MATRIX

The issue involved in the present matter pertains to the invocation of the extended period of limitation under Section 74 of the CGST Act, 2017 in cases involving allegations of fraud, wilful misstatement, or suppression of facts. In the instant case, the GST Department issued a Show Cause Notice to the Assessee for the financial years 2017–18 to 2021–22 alleging fraudulent availment of Input Tax Credit by way of wilful misstatement and suppression of material facts. Although the Assessee had responded to the Show Cause

Notice and questioned the jurisdiction of the Proper Officer on the ground that the proceedings were initiated beyond the prescribed limitation period, the Proper Officer proceeded to pass an adjudication order dated 31.01.2024 confirming GST liability amounting to approximately Rs. 3.09 crores.

JUGDMENT/ORDER OF THE AUTHORITY

1. Under Section 73 of the CGST Act, the normal limitation period for issuing a show cause notice is three years from the due date for furnishing the annual return for the relevant financial year, in cases where the tax shortfall does not involve fraud, wilful misstatement, or suppression of facts. In the present case, however, the GST department invoked the extended limitation period under Section 74 on the ground of fraudulent availment of input tax credit, wilful misstatement, and suppression of facts.

2. The Calcutta High Court dismissed the writ petition and ruled in favour of the GST authorities. The Court observed that both the show cause notice and the final order had clearly set out the reasons for invoking the extended limitation period under Section 74, including allegations relating to fraudulent availment of input tax credit, wilful misstatement, and suppression of facts. The Court also referred to the Division Bench judgment in *Central Arya Road Transport v. Union of India*, wherein it had been clarified that the extended limitation period cannot be invoked in the absence of factual findings and clear allegations of fraud, wilful misstatement, suppression of facts, or collusion committed by the Assessee. However, the Court noted that, in the present matter, the show cause notice had clearly spelt out the basis for invoking the extended period.

3. The Court further held that the correctness of such allegations or the sufficiency of evidence are matters of

fact, which cannot ordinarily be examined in writ jurisdiction.

4. Accordingly, the Court refused to interfere with the proceedings and dismissed the writ petition. However, it clarified that the dismissal would not prevent the Assessee from pursuing the appropriate statutory remedy by way of appeal.

OUR COMMENTS

From the above judgment of the Hon'ble Calcutta High Court, it is evident that the extended limitation period under Section 74 of the CGST Act can be invoked only when the Department specifically alleges fraud, wilful misstatement, or suppression of facts with supporting reasons in the Show Cause Notice. The Court further clarified that once such allegations are clearly recorded in the notice and adjudication order, the correctness or sufficiency of evidence cannot ordinarily be examined under writ jurisdiction. Disputed questions of fact are required to be adjudicated through the statutory appellate mechanism provided under the GST law.

CASE LAW 20

Truvolt Engineering Company Pvt. Ltd. & Anr.

Versus

The Joint Commissioner of State Tax, Directorate of Revenue Intelligence & Enforcement & Ors.
IN THE HIGH COURT AT CALCUTTA

Petition/Appeal No.	**Relevant Section/Rule**
WPA 21285 of 2024 M/L 297 12.03.2026 Kausik ct no. 237	Principles of Natural Justice
Dated 12.03.2026	

Opportunity of Cross-Examination Mandatory Where Department Relies Upon Third-Party Statements

FACTUAL MATRIX

The department issued a pre-show cause notice in Form GST DRC-01A followed by a Show Cause Notice in Form GST DRC-01 alleging wrongful availment of Input Tax Credit (ITC) by the petitioner. The allegations in the SCN were based upon statements recorded from two suppliers. The petitioner approached the Calcutta High Court apprehending that an adverse adjudication order might be passed without granting an opportunity to cross-examine the said suppliers.

The petitioner approached the Calcutta High Court challenging the said Show Cause Notice primarily on the ground that the allegations contained therein were founded

upon statements recorded from two suppliers relied upon by the department. The petitioner apprehended that the adjudicating authority might proceed to pass an adverse order solely relying upon such statements without granting the petitioner an opportunity to cross-examine the said persons.

JUGDMENT/ORDER OF THE AUTHORITY

The Calcutta High Court disposed of the writ petition by recording the submission made on behalf of the department that if the adjudicating authority intended to rely upon the statements of any person during adjudication, the petitioner would be granted an opportunity to cross-examine such persons. Accordingly, the Court directed the department to complete the adjudication proceedings in accordance with law and in light of the observations made in the order.

OUR COMMENTS

The judgment reinforces the principle that where the department seeks to rely upon third-party statements in GST proceedings, the assessee must be granted an opportunity of cross-examination in compliance with the principles of natural justice. The decision also reiterates that High Courts ordinarily do not interfere at the Show Cause Notice stage when an effective adjudication mechanism is available, provided procedural safeguards and fair hearing are ensured during the proceedings.

CASE LAW 21

COMMISSIONER OF CGST AND CENTRAL EXCISE, BOLPUR

VERSUS

SARVA MANGALAM GAJANAN STEEL PVT. LTD
High Court at Calcutta

Petition/Appeal No. CEXA Nos. 26 and 25 of 2023 and I.A. No. GA 1 of 2024	**Relevant Section/Rule** The case involved Rule 2(k), Rule 3 and Rule 9(5) of the Cenvat Credit Rules, 2004 and Section 35G of the Central Excise Act, 1944.
Citation (2024) 20 Centax 594 (Cal.)	
Dated 12.04.2024	

The Tribunal has granted relief to the assessee on appreciating the factual position and we find no question of law much less substantial questions of law arising for consideration.

— PARA 05.T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The Revenue challenged the order of the CESTAT granting Cenvat credit to the respondent assessee, Sarva Mangalam Gajanan Steel Pvt. Ltd., on certain steel goods used in manufacture of finished products. The Department argued that the goods could not qualify as valid inputs since the assessee did not possess a furnace required for such manufacturing activity. The assessee contended that the materials were processed through heating, straightening,

cutting and rerolling in its rolling mill for manufacture of steel products. The Tribunal accepted the assessee's factual explanation and held that the Department failed to produce evidence disproving the manufacturing process adopted by the assessee.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

The Calcutta High Court held that the Tribunal had correctly appreciated the factual position and rightly concluded that the goods purchased by the assessee were actually used in the manufacture of finished steel products.

The Court observed that the assessee had explained the manufacturing process involving heating, straightening, cutting and rerolling of the materials, and the Department failed to produce any evidence to contradict these factual findings.

The Court further held that the adjudicating authority's observations regarding requirement of ingots and billets were not relatable to the actual facts of the assessee's case. Accordingly, the Court found that no substantial question of law arose for consideration and dismissed the Revenue's appeal.

OUR COMMENTS

The judgment in Commissioner of CGST and Central Excise, Bolpur v. Sarva Mangalam Gajanan Steel Pvt. Ltd. is significant because it emphasizes that eligibility of Cenvat credit should be decided on the basis of actual facts and use of inputs in the manufacturing process, rather than on assumptions made by the Department. The Court accepted the assessee's explanation regarding the processing of materials and noted that the Department failed to produce evidence to disprove the same.

The judgment also highlights that the High Court will generally not interfere with factual findings of the Tribunal unless a substantial question of law arises. It further clarifies that general industry practices or theoretical requirements cannot automatically be applied to every assessee without examining the specific facts of the case.

CASE LAW 22

SHRADDHA OVERSEAS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, CHANDNI CHOWK

High Court of Judicature at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T No. 1860 of 2022 with I.A. Nos. CAN 1 and 2 of 2022	Section 16 read with Section 107 and Rule 113 of the CGST/WBGST Rules, 2017 relating to eligibility of ITC and appellate proceedings.
Citation (2023) 3 Centax 118 (Cal.)	
Dated 16.12.2022	

We find that the order passed by the appellate authority to be a non-speaking order in the sense that there is no independent finding rendered by the appellate authority qua the allegation against the appellants.

— PARA 10.

FACTUAL MATRIX

The appellant, Shraddha Overseas Pvt. Ltd. vs. Assistant Commissioner of State Tax, Chandni Chowk, had availed Input Tax Credit (ITC) on purchases made during October 2018 based on valid tax invoices and payments made through banking channels. The department alleged that the suppliers were non-existing dealers and that the transactions were

supported by fake documents. During appellate proceedings, the First Appellate Authority itself recorded that substantial parts of the transactions were backed by proper documentation. However, ITC was denied mainly on the basis that subsequent departmental enquiries conducted at the suppliers' premises revealed cancellation of their GST registrations. Aggrieved by the appellate order, the assessee approached the Calcutta High Court challenging the denial of ITC.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court ruled in favor of the assessee, holding that Input Tax Credit (ITC) cannot be denied solely due to the retrospective cancellation of a supplier's GST registration, especially when the purchaser had valid tax invoices and made payments through banking channels. The Appellate Authority denied ITC based on reasons not mentioned in the Show Cause Notice (SCN) and failed to consider the grounds raised by the adjudicating authority, making it a non-speaking order. The court emphasized that authorities must establish that the supplier was non-existent at the time of the transaction rather than relying solely on subsequent cancellation. The judgment set aside the appellate order and remanded the case for fresh consideration, ensuring a fair review of the assessee's claims.

OUR COMMENTS

This judgment is significant because it protects genuine taxpayers from arbitrary denial of Input Tax Credit merely due to subsequent cancellation of a supplier's GST registration. The Court recognized that where transactions are supported by proper invoices, transport documents, and banking payments, the purchasing dealer cannot automatically be held responsible for later defaults or irregularities committed by the supplier.

The decision also reinforces the importance of principles of

natural justice and reasoned adjudication under GST law. The High Court clearly stated that authorities cannot travel beyond the allegations mentioned in the show cause notice and must pass a speaking order after independently examining the facts of the case. This ruling provides important relief to bona fide taxpayers facing ITC disputes arising from retrospective cancellation of supplier registrations.

CASE LAW 23

SURYA BUSINESS PRIVATE LIMITED

VERSUS

STATE OF ASSAM
High Court of Gauhati

Petition/Appeal No. W.P. (C) No.528 of 2024	**Relevant Section/Rule** Section 73(1) read with Section 50 of the CGST Act and Circular 183/15/2022-GST.
Citation (2024) 16 Centax 15 (Gau.)	
Dated 05.02.2024	

GST authority (respondents) shall not act upon the impugned Show Cause Notice dated 11.01.2024 till the next date of listing.

PARA 6, PER MANISH CHOUDHURY, J.

FACTUAL MATRIX

A Show Cause Notice dated 11.01.2024 was issued to the Petitioner Surya Business Private Limited under Section 73(1) read with Section 50 of the Assam GST Act, 2017, demanding recovery of Rs. 27,25,503/- (comprising SGST Rs. 11,26,329/-, CGST Rs. 11,26,329/-, and IGST Rs. 4,72,845/-) being Input Tax Credit (ITC) allegedly excess claimed for the period 2018-2019, along with applicable interest and penalty.

The Petitioner challenged the Show Cause Notice by way of a writ petition before the High Court of Gauhati, contending that it had availed ITC on the basis of valid tax invoices duly raised by the supplier and had also made payment of taxes to

the supplier. In support of its case, the Petitioner placed reliance on the judgment of the Hon'ble Supreme Court in Union of India v. Bharti Airtel Ltd. (2021) and the decision of the Calcutta High Court in Suncraft Energy (P.) Ltd. v. Assistant Commissioner, State Tax, Ballygunge Charge (2023).

The Revenue, on the other hand, submitted that the Show Cause Notice had been issued after due consideration of the instructions contained in CBI&C Circular No. 183/15/2022-GST dated 27.12.2022, more particularly Clause 4.1.1 thereof.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court of Gauhati, after hearing the submissions of the learned counsel for both parties and observing that the matter required further examination, directed that the case be listed on 22.02.2024.

Pending the next date of listing, the Court granted an interim stay and directed that the Respondents shall not act upon the impugned Show Cause Notice dated 11.01.2024 till the next date of listing. The interim order was accordingly passed in favour of the assessee.

OUR COMMENTS

This is a significant interim ruling that reaffirms the right of a taxpayer to judicial protection against coercive recovery action where the underlying show cause notice is prima facie disputed. The High Court of Gauhati, by staying the operation of the Show Cause Notice pending hearing, has signalled that the issuance of demands for ITC disallowance cannot be mechanically pursued without adequate examination of the taxpayer's substantive defences.

Taxpayers facing similar show cause notices for ITC demands — particularly for periods such as 2018-19 — should carefully examine whether the notice is backed by proper application of the applicable circular instructions and whether their supplier's compliance record has been duly

verified before a demand is raised. Where the ITC has been availed on valid invoices with tax actually paid to the supplier, strong legal grounds exist to contest such notices before the appropriate judicial forum. Timely filing of a detailed reply and, where necessary, approaching the High Court for interim relief remains a prudent course of action.

CASE LAW 24

SVAKSHA DISTILLERY LIMITED & ANR.

VERSUS

THE ASSISTANT COMMISSIONER OF WBGST, BARASAT CHARGE AND ORS.
High Court at Calcutta

Petition/Appeal No. W.P.A. No.20176 of 2025	**Relevant Section/Rule** Section 16(4), 16(5) & Section 107 of Central Goods and Services Act, 2017/West Bengal Goods and Services Act, 2017
Citation 2025 TAXSCAN (HC) 2442	
Dated 17.11.2025	

"…there does not appear to be any dispute as regards the legal position that a registered person who satisfies the provisions of Section 16(5) of the said Act of 2017 and the aforesaid Notifications, would be entitled to claim ITC in respect of any Financial Year falling between the Financial Year 2017 – 2018 by lodging his claim within November 30, 2021."

— PARA 5, OM NARAYAN RAI, J.

FACTUAL MATRIX

The Petitioner, M/s. Svaksha Distillery Ltd., had deferred availment of ITC pertaining to FY 2018-19 and FY 2019-20 and subsequently claimed the same in returns filed for the quarter of January-March 2021. The Department treated the claim as excess ITC pertaining to FY 2020–21 and confirmed

demand of tax, interest and penalty despite the petitioner's clarification that the ITC related to earlier financial years and stood reflected in GSTR-2A. The appeal filed under Section 107 was rejected on 14.06.2024. Thereafter, pursuant to the retrospective insertion of Section 16(5) and issuance of CBIC Notification dated 08.10.2024 prescribing a special rectification procedure, the petitioner sought rectification of the appellate order. Upon rejection of the rectification application on 30.06.2025, the petitioner filed the present writ petition contending that the ITC claim was within the extended statutory time limit and covered under the amended provisions.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court, while disposing of the petition, noted that:

1. A registered person satisfying the requirements of Section 16(5) of the GST Act, read with the relevant Notifications, is entitled to claim Input Tax Credit for the specified financial years, provided the claim is made within the prescribed time limit.

2. The Notification dated October 8, 2024 issued under Section 148 prescribes a specific procedure for rectification of orders where denial of ITC arose from contravention of Section 16(4), provided the assessee is otherwise eligible under Section 16(5) or 16(6).

3. The Appellate Authority was required to consider the rectification application in light of the amended statutory provisions and the said Notification, particularly when earlier reliance had been placed on Section 16(4).

4. The approach of the Appellate Authority in disregarding the applicability of Section 16(4) while deciding the rectification application, despite having relied on it earlier, was not proper.

5. The matter ought to be reconsidered afresh by the Appellate Authority in accordance with law, specifically taking into account Section 16(5) and the Notification dated October 8, 2024.

6. Accordingly, the impugned order rejecting the rectification application was set aside and the matter was remanded for fresh consideration.

OUR COMMENTS

This decision reinforces that the amendment introduced under Section 16(5) of the GST Act, along with the subsequent notification dated October 8, 2024, provides substantive relief to taxpayers who had otherwise been denied ITC on account of limitation under Section 16(4).

The Court has emphasized that once statutory eligibility is satisfied, the benefit cannot be denied on procedural or technical grounds, and authorities are duty-bound to revisit earlier orders in light of the amended legal framework. It also highlights the importance of proper application of retrospective amendments and notifications by appellate authorities, particularly in rectification proceedings, ensuring that relief measures introduced by the legislature are effectively implemented in practice.

3. CANCELLATION OF REGISTRATION

CASE LAW 25

M/S BISWESWAR MIDHYA

VERSUS

SUPERINTENDENT, CGST & C. EX., RANGE V, HALDIA-II DIVISION

High Court of Calcutta

Petition/Appeal No. MAT No. 1376 of 2022	**Relevant Section/Rule** Section 29 of the CGST Act, 2017 and Rule 21A of the CGST Rules, 2017
Citation 2022 (66) G.S.T.L. 326 (Cal.)	
Dated 01.09.2022	

The respondent department has to take a pragmatic view in the matter because a taxpayer is not to be treated as a person hostile to the department.

PARA 05, PER T.S. SIVAGNANAM, C.J. AND PROSENJIT BISWAS, J.

FACTUAL MATRIX

The Petitioner filed a writ petition before the Hon'ble Calcutta High Court challenging the show cause notice dated 21.07.2022 issued for cancellation of GST registration on the ground of alleged failure to pay tax and penalty.

The primary contention of the Petitioner was that no adjudication order had been passed by the competent authority determining or quantifying any tax liability, and therefore initiation of cancellation proceedings was

premature and unsustainable in law.

The Petitioner further submitted that since January 2020, the Anti-Evasion Wing and Audit Department had repeatedly issued summons and conducted inquiries in relation to the matter. However, the department failed to issue any proper show cause notice for adjudication or complete the proceedings for determination of liability.

Despite the absence of adjudication, the GST registration of the Appellant was suspended pending cancellation proceedings, thereby severely affecting the Petitoners's business operations. Aggrieved by such action, the Petitioner approached the Hon'ble High Court seeking revocation of suspension and appropriate reliefs.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. Quantification of liability can arise only after issuance of a proper show cause notice and completion of adjudication proceedings

2. The Court held that suspension of registration without adjudication was counterproductive and against the interest of revenue, as cancellation would prevent the dealer from carrying on business and generating taxable supplies.

3. It was noted that the Department had prolonged the matter for an unreasonable period despite repeated summons and interactions with the taxpayer.

4. The Court emphasized that taxpayers should not be treated as hostile persons and that proceedings must be conducted pragmatically and in accordance with law.

The Hon'ble Court disposed of the appeal and writ petition by directing the authorities to immediately revoke the suspension of the petitioner's registration and issue a proper

show cause notice within seven days. The petitioner was to be granted reasonable opportunity to file objections, after which the matter was to be adjudicated through a reasoned order in accordance with law.

OUR COMMENTS

The present judgment is a significant ruling on the issue of suspension and cancellation of GST registration without prior adjudication or quantification of tax liability. The Hon'ble Calcutta High Court rightly held that tax liability can attain finality only after issuance of a proper show cause notice and completion of adjudication proceedings. Accordingly, suspension of registration merely on the basis of allegations or pending investigation was held to be unsustainable.

The Court further observed that suspension of registration may itself operate against the interest of revenue, as the taxpayer becomes incapable of carrying on business and generating taxable supplies. The judgment reinforces the principles of natural justice and procedural fairness while emphasizing that taxpayers should not be subjected to coercive action without following due process prescribed under law.

CASE LAW 26

M/S LOHUM CLEANTECH PVT. LTD.

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE, COMMERCIAL TAXES, SALTAKE CHARGE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 8122 of 2024 with CAN No. 1 of 2024	Section 29 of the CGST Act, 2017 / WBGST Act, 2017 – Cancellation of registration – Existence of business at declared place of business
Citation (2024) 19 Centax 518 (Cal.)	
Dated 22.05.2024	

The very basis of passing the order of cancellation of the petitioners' registration stands removed.

— PARAS 7, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The petitioner's GST registration was cancelled on the allegation that no business was being conducted from the declared place of business and that the registration was obtained through suppression of facts. Although the petitioner replied to the show cause notice, the proper officer cancelled the registration, which was later upheld by the appellate authority. During the pendency of the writ petition, a joint inspection was conducted at the business premises, where the State Tax Officer confirmed that the entity was genuinely operating from the declared place. Based on this

finding, the petitioner sought restoration of its GST registration.

JUGDMENT/ORDER OF THE AUTHORITY

During the proceedings, the Court directed a joint inspection, which was conducted on April 22, 2024. The State Tax Officer's report confirmed that the petitioner was operating from the declared business premises, disproving the basis for cancellation. The High Court relied on the precedent set in Subhankar Golder v. Assistant Commissioner of State Tax and ruled that the cancellation order must be set aside, subject to the petitioner fulfilling compliance requirements, including filing pending returns and paying outstanding taxes, interest, fines, and penalties. The Court further directed the jurisdictional officer to open the GST portal within four weeks to allow the petitioner to comply. If the petitioner failed to meet the compliance conditions within eight weeks, the benefit of the order would not apply. Accordingly, the cancellation order as well as the appellate order were set aside, subject to the Assessee filing pending returns and making payment of applicable tax, interest, fine and penalty within the prescribed time.

OUR COMMENTS

This case reaffirms that GST registration cancellations must be based on verified facts, not assumptions. It reflects a practical and justice-oriented approach adopted in matters of GST registration cancellation. The Court emphasized that registration cannot be cancelled merely on assumptions when actual verification proves that business activities are being carried out from the declared premises. By setting aside the order after a joint inspection, the Court upheld due process and taxpayer rights.

CASE LAW 27

NIKITA AGARWAL

VERSUS

THE AC OF REVENUE COMMERCIAL TAXES AND STATE TAXES.
High Court At Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No.8144 of 2025	Section 29 read with Section 169 of the CGST/ WBGST Act, 2017 and Rule 22 of the CGST/ WBGST Rules, 2017 relating to cancellation of GST registration, retrospective cancellation, and service of notice.
Citation	
(2025) 36 Centax 176 (Cal.)	
Dated	
09.09.2025	

Issuance of show cause notice is not an empty formality as the noticee is entitled to have an effective opportunity to put forth his/ her submission, and the department cannot be given a second lease of life to resurrect the matter once again by issuance of a fresh show cause notice.

— PARA 3 & 4, - T.S. SIVAGNANAM, C.J. AND CHAITALI CHATTERJEE (DAS).

FACTUAL MATRIX

The assessee, Ms. Nikita Agarwal, was a registered taxpayer under the GST laws. The Assistant Commissioner of Revenue, Commercial Taxes and State Tax, initiated proceedings for cancellation of her GST registration on the allegation that the registration had been obtained by fraud, willful misstatement, or suppression of facts. Accordingly, a show

cause notice was issued on 24.03.2022 and the registration was also suspended from the same date. However, the notice did not specify any details or particulars regarding the alleged fraud, misstatement, or suppression, nor did it disclose the basis on which such allegations were made.

Subsequently, since no reply was filed by the assessee, the proper officer passed an order cancelling the GST registration with retrospective effect from 09.05.2019. The assessee thereafter filed an application seeking revocation of the cancellation order. In response, another notice was issued by the department. The assessee contended that she had appeared before the authority and requested an adjournment by submitting a written letter, but without considering such request or granting an opportunity of hearing, the revocation application was rejected on the ground that no reply had been filed within the prescribed time.

Being aggrieved by the rejection of the revocation application and retrospective cancellation of registration, the assessee preferred an appeal before the Appellate Authority. The Appellate Authority dismissed the appeal and, for the first time, referred to certain allegations and documents against the assessee which had never been disclosed to her at the earlier stage of proceedings. The assessee also explained that there was an additional place of business which could not be updated on the GST portal because of cancellation of registration.

Thereafter, the assessee approached the Hon'ble Calcutta High Court by filing a writ petition challenging the cancellation order as well as the appellate order. The assessee contended that the entire proceedings were vitiated due to a vague and defective show cause notice, absence of proper opportunity of hearing, and arbitrary retrospective cancellation of GST registration without any justification.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court allowed the writ petition

as well as the intra-court appeal filed by the assessee and set aside the order cancelling the GST registration retrospectively along with the appellate order affirming such cancellation. The Court observed that the show cause notice issued by the department was vague and defective as it merely alleged fraud, willful misstatement, or suppression of facts without disclosing any specific particulars or material against the assessee.

The Court held that issuance of a show cause notice is not an empty formality and that every taxpayer is entitled to an effective opportunity of hearing before any adverse action is taken. It further observed that a defective show cause notice amounts to a jurisdictional error which vitiates the entire proceedings and such defect cannot be cured at a later stage or even in appeal.

The Court also held that retrospective cancellation of GST registration cannot be done mechanically and must be supported by objective reasons. Since the department had not provided any justification for cancelling the registration retrospectively from 09.05.2019, the action was held to be arbitrary and unsustainable in law.

Accordingly, the Hon'ble High Court directed the department to restore the GST registration of the assessee with retrospective effect and further directed the authorities to consider the assessee's application for additional place of business in accordance with law.

OUR COMMENTS

This ruling is a strong reaffirmation of natural justice principles in GST registration cancellation proceedings, where departments routinely issue omnibus SCNs invoking "fraud, willful misstatement or suppression" without specifying which ground or what particulars apply. The Calcutta High Court's reliance on the celebrated Oryx Fisheries doctrine — that an SCN must offer a genuine

opportunity, not an empty ceremony sets a clear benchmark for departmental drafting standards. The ruling that an inherent SCN defect is a jurisdictional error incurable at any stage including by way of fresh SCN provides taxpayers with a powerful shield against backdoor revival of proceedings.

4. CLASSIFICATION ISSUE

CASE LAW 28

INDRANIL CHATTERJEE : ADVANCE RULING
West Bengal Advance Ruling Authority

Petition/Appeal No. WBAAR 16/2023 & 06/WBAAR/Appeal/2023	**Relevant Section/Rule** Classification of Product as Medicaments under HSN 3004 or Cosmetics under HSN 3304
Citation (2023) 77 GSTL 439 - AAR, (2024) 16 Centax 441 - AAAR	
Dated 10.08.2023 – AAR 29.02.2024 - AAAR	

What is important to be seen is how the consumer looks at a product and what is his perception in respect of such product. The user's understanding is a strong factor in determination of classification of the products.

— PARA 04, PER NAVNEET GOEL & DEVI PRASAD KARANAM, MEMBER APPELLATE AUTHORITY FOR ADVANCE RULING UNDER GST, WEST BENGAL.

FACTUAL MATRIX

The Petitioner, Indranil Chatterjee filed an advance ruling application before the West Bengal Authority for Advance Ruling, seeking what should be the correct classification of the Product "JAC OLIVOL BODY OIL", whether it should be treated as medicine under chapter 30 or as cosmetics under chapter 33.

The Product was claimed to be an Ayurvedic Patent & Proprietary Medicine manufactured under a valid license

issued under the Drugs and Cosmetics Act, 1940. Submissions were made substantiating the product's therapeutic and prophylactic properties and it was submitted that the product is being manufactured with the ingredients mentioned in the recognised Ayurvedic Books such as Haridra, Kapoor, Neem Oil, etc. and used to relieve body ache, cure dry skin, heal wounds and minor burns, etc.

It was further submitted that the product besides its curing properties carries anti-ageing, moisturising and skin-softening properties which were incidental and consequential benefits to the medicinal nature of the ingredients used in the oil.

Reliance was also placed on the judgments delivered by the Hon'ble Apex Court and other High Courts where similar classification issues were placed and it was held that the products having therapeutic or prophylactic uses should be classified as medicaments even if they also possess cosmetic attributes.

The matter was placed before the Advance ruling authority before the Appellate Authority where it was held that merely because a product is manufactured using Ayurvedic ingredients or under a drug licence does not automatically make it a medicament. The decisive factor is the primary use and consumer perception of the product.

The AAR applying the common parlance test concluded that the products primarily used for skin care, beautification, moisturizing or prevention of dryness would fall under Chapter 33. It was observed that the predominant function of the product was care of skin and its maintenance and not a treatment or cure of some disease. Accordingly, the Product was classified as "Cosmetics" under Chapter 33 despite its therapeutic attributes.

Aggrieved, the Petitioner filed an appeal before the Appellate Authority for Advance Ruling, West Bengal.

JUGDMENT/ORDER OF THE AUTHORITY

After hearing the submissions made by the petitioner, the members of the Appellate Authority for Advance Ruling had different opinions on the classification of the Product.

While one of the members of the AAAR had the opinion that the Advance Ruling Authority did not consider the fact that the ingredients used in the manufacture of the JAC OLIVOL BODY OIL is ayurvedic medicinal product and has only relied on the Common Parlance Test of the twin tests of classification. It was observed that the perceived utility of a product does not necessarily serve as a determining factor in its classification. Accordingly, the product is to be classified as medicaments and not cosmetics.

The other member of the Appellate Authority, relying on the judgment of the Hon'ble Supreme Court in the matter of Alpine Industries, observed that any subsidiary therapeutic or prophylactic use of the product would not change its nature as "Hair oil", if in the common parlance, it is treated as a cosmetic and it was concluded that the entire issue whether the instant product is to be classified as a cosmetic or a medicine mainly rests on the twin tests. The other member of the Appellate Authority held that in common parlance if a person is to cure burn he will opt for anti-burn cream and not the product in question. Also, it was observed that while mustard oil, olive oil or coconut oil helps cure dry skin but it cannot cure skin diseases like eczema or psoriasis. Accordingly, it was ruled that the product Jac Olivol Body Oil can be used to relieve body ache, joint & knee pains. It is a well accepted fact that a body massage using any body-oil like mustard oil, coconut oil or olive oil can give relief to body spasm and ache. But at the same time, pain and ache arising out of arthritis, tendinitis, gout, spondilitis etc demand specified medical treatment with medicines. Accordingly, the product JAC OLIVOL BODY OIL is to be classified as cosmetic and not medicament.

Owing to the difference in opinions of the members of the Appellate Advance Ruling Authority, no order could be delivered. However, the ruling delivered earlier by the Advance Ruling Authority was set aside.

OUR COMMENTS

The present matter highlights the continuing controversy surrounding classification of Ayurvedic and herbal products that possess both therapeutic and cosmetic characteristics.

The ruling reaffirms that for classification under Heading 3004, merely obtaining a drug licence or using Ayurvedic ingredients is not sufficient. The authorities continue to apply the common parlance test and the primary use/ consumer perception test while determining whether a product is a medicament or cosmetic preparation.

The divergence of opinion within the AAAR itself demonstrates that classification of such products is highly interpretational and fact specific.

The case assumes significance for manufacturers of Ayurvedic oils, creams, balms and wellness products because product literature, packaging, marketing strategy and consumer perception may substantially influence GST classification. Importantly, since the AAAR could not arrive at a majority decision, the AAR ruling lost its precedential certainty in the present case, thereby leaving the issue open for further litigation and judicial interpretation.

5. REFUND

CASE LAW 29

ABINASH RAI

VERSUS

THE ASSISTANT COMMISSIONER OF WEST BENGAL STATE TAX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA 1906 OF 2023	Section 54(3)(i) of the CGST Act, 2017- Refund of unutilized ITC for zero-rate supplies made without payment of tax.
Citation	
(2023) 12 Centax 286 (Cal.)	
Dated	
21.09.2023	

GST authorities, while dealing with a refund application, cannot bypass the separate statutory machinery provided under the GST regime for determination and recovery of alleged dues by directly appropriating or adjusting the refund amount.

FACTUAL MATRIX

The assessee had sought refund of unutilized Input Tax Credit under Section 54(3) of the CGST/WBGST Act, 2017 on account of zero-rated supplies made without payment of tax, aggregating to Rs. 10,09,000/-. Pursuant to the refund application, a show cause notice was issued by the department, to which the assessee duly responded. However, the Adjudicating Authority proceeded to reject the entire refund claim. Aggrieved thereby, the assessee preferred a statutory appeal, wherein the Appellate Authority, while partly allowing the refund claim to the

extent of Rs. 6,87,121/-, impermissibly deducted an amount of Rs. 4,76,626/- towards alleged output tax liability, despite the absence of any independent recovery proceedings contemplated under law. Pursuant to the passing of the order, the assessee had paid an aggregate amount of Rs. 4,76,626/-.

Being aggrieved with the above set of facts, the assessee filed a Writ Petition before the Hon'ble Calcutta High Court challenging the action of the Appellate Authority.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court delivered a sharp and principle-driven ruling:

1. The Appellate Authority, by impermissibly clubbing the assessee's refund claim with Invoice No. EXP/2021-22/005 dated 28 February 2022 while passing the order, acted in clear excess of the authority conferred under law. The inclusion and adjustment of the said invoice in the refund proceedings lacked any statutory sanction and was therefore wholly unsustainable.

2. Even assuming a portion of the refund claim to be inadmissible, the authorities could not, in the guise of adjudicating the refund application, simultaneously undertake recovery or adjustment of the alleged liability without resorting to the independent recovery mechanism prescribed under the GST enactments.

3. The matter was remanded back to the Appellate Authority for fresh consideration only in respect of the aforesaid amount of Rs. 4,76,626/- in accordance with law and the Authorities were directed to release the admitted refundable amount expeditiously.

OUR COMMENTS

The ruling in the above judgment is an important

contribution to evolving GST jurisprudence, particularly in the context of refund administration and the limits of departmental authority. The Calcutta High Court, through this decision, reaffirmed a crucial administrative principle that statutory powers under tax legislation cannot be exercised in an expanded or improvised manner merely to protect revenue interests.

The real significance of the judgment lies in the Court's clear distinction between a "refund proceeding" and a "recovery proceeding". Adjudication of refund application is intended only to examine the eligibility and quantification of the refund claimed. It is not a mechanism through which authorities may unilaterally recover disputed amounts without invoking the independent statutory machinery prescribed for recovery.

This judgment also protects legitimate refunds from being obstructed through unauthorized adjustments.

CASE LAW 30

M/S SICPA India Pvt. Ltd.

VERSUS

The Union of India
High Court of Sikkim at Gangtok

Petition/Appeal No.	**Relevant Section/Rule**
W.P. (C) No. 54 of 2023 W.A. No. 2 of 2025	Sections 49(6), 54(3) and 29 of the CGST Act, 2017 – Refund of unutilized ITC on closure/discontinuance of business.
Citation (2025) 31 Centax 268 (Sikkim), (2025) 34 Centax 200 (Sikkim)	
Dated 10.06.2025, 5.09.2025	

"Clauses (i) and (ii) of the first proviso to sub-section (3) of Section 54 are the only two situations in which a refund can be granted."

— PARA 13(v), PER BHASKAR RAJ PRADHAN, J.

FACTUAL MATRIX

The Company discontinued its business operations and sold its machinery and manufacturing facilities during April 2019 to March 2020. After reversal of applicable ITC, an unutilized balance of ITC amounting to Rs. 4,37,61,402/- remained in the Electronic Credit Ledger.

The Petitioner filed a refund application under Section 49(6) read with Section 54 of the CGST Act seeking refund of such unutilized ITC.

However, the refund application was rejected by the Assistant Commissioner and the Appellate Authority upheld the rejection on the ground that Section 54(3) permits refund only in two specified situations and closure of business is not one of them.

Aggrieved, the Petitioner approached the Hon'ble Single Bench of Sikkim High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The learned Single Judge of the High Court of Sikkim held in favour of SICPA INDIA PVT. LTD. and ruled that there was no express prohibition in the CGST Act against refund of accumulated ITC upon discontinuance of business.

2. The Court observed that retention of such ITC without authority of law would be impermissible and accordingly directed grant of refund.

Aggrieved by the above decision, the Revenue preferred a writ appeal before the Division Bench of the High Court of Sikkim in UNION OF INDIA v. SICPA INDIA PVT. LTD. reported in (2025) 34 Centax 200 (Sikkim).

The Division Bench in UNION OF INDIA v. SICPA INDIA PVT. LTD. reversed the earlier decision. The Division Bench relied upon the Supreme Court ruling in Union of India v. VKC Footsteps India (P.) Ltd. and held that refund of unutilized ITC is purely a statutory right and can only be granted in circumstances specifically provided under Section 54(3).

The Hon'ble Court clarified that Section 49(6) does not independently confer any refund entitlement and merely provides that refund may be granted in accordance with Section 54. Since closure of business is not one of the two situations specified under Section 54(3), refund of

accumulated ITC upon closure of business is not permissible.

Accordingly, the Division Bench set aside the Single Judge's decision and allowed the Revenue's appeal.

Further, the petitioner approached the Hon'ble Supreme Court challenging the order of the Hon'ble Division Bench and matter is pending for hearing.

OUR COMMENTS

While the Hon'ble Single Bench order granting refund of unutilized balance of credit ledger protected the taxpayer and provided refund of its rightfully accumulated credit balance, the ruling delivered by the Hon'ble Division Bench of the Sikkim High Court reversed the same. The issue whether the businesses can claim the refund of the ITC left in the credit ledger remains still unsettled.

The final say whether such refund may be granted or not is yet to be decided by the Hon'ble Supreme Court.

CASE LAW 31

M/S EDELWEISS RURAL & CORPORATE SERVICES LTD.

VERSUS

THE DEPUTY COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 3033 of 2025	Section 54 of the CGST Act, 2017 – Refund upon closure of business and credit of refund amount to Electronic Credit Ledger.
Citation	
(2025) 30 Centax 385 (Cal.)	
Dated	
05.05.2025	

"There is no business for the petitioner to take benefit of the refund credited to the petitioner no.1's credit ledger."

— PARA 3, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The petitioner, Edelweiss Rural & Corporate Services Ltd., had closed its business operations and its GST registration was already cancelled. After succeeding in appeal against rejection of refund, the petitioner filed a refund application seeking payment of the sanctioned amount directly into its bank account. Although the refund sanction order allowed refund to the bank account, the detailed order simultaneously directed that the amount be credited to the electronic credit ledger. Aggrieved by this contradictory direction, the petitioner approached the Calcutta High Court contending that credit to the ledger was meaningless since

the business had already ceased operations and there were no tax liabilities pending.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The direction to credit the refund amount to the electronic credit ledger was self-contradictory when the petitioner's business had already been closed and GST registration stood cancelled.

2. The Court observed that since there were no pending tax liabilities and no ongoing business operations, the petitioner could not derive any benefit from refund being credited to the electronic credit ledger.

3. Accordingly, the Court directed the Proper Officer to reconsider the refund direction and take a fresh decision after granting an opportunity of hearing to the petitioner.

Thereby, setting aside the Appellate Authority's order and directing refund of unutilized ITC to the petitioners.

OUR COMMENTS

This judgment highlights the practical and taxpayer-oriented approach in GST refund matters by emphasizing that procedural directions should align with commercial reality. The Court rightly observed that once the taxpayer had discontinued business operations and its GST registration stood cancelled, directing the refund amount to the electronic credit ledger served no practical purpose. The decision reinforces that refund mechanisms under GST should facilitate actual monetary relief to taxpayers and should not result in meaningless procedural compliance. The ruling also underscores the importance of consistency in refund sanction orders and protects taxpayers from contradictory administrative directions.

CASE LAW 32

M/S GLEN INDUSTRIES PVT. LTD.

VERSUS

THE DEPUTY DIRECTOR, DIRECTORATE GENERAL OF GST INTELLIGENCE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA No. 3254 of 2025	Section 54 read with Section 74 of the CGST/WBGST Act, 2017 and Rule 96(10) of the CGST/WBGST Rules, 2017 – Recovery of IGST refund after omission of Rule 96(10).
Citation	
(2025) 29 Centax 141 (Cal.)	
Dated	
26.03.2025	

"Rule 96(10) being omitted unconditionally, without a saving clause in favour of the pending proceedings, all actions from the date of such omission of the rule must stop."

— PARA 11, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Department initiated proceedings against the Petitioner alleging contravention of Rule 96(10) of the CGST Rules and wrongful availment of automatic refund of IGST amounting to approximately Rs. 1.96 crores. A show cause notice was issued under Section 74 of the CGST Act and subsequently an order confirming the demand along with interest was passed.

The Petitioner contended that although proceedings were initiated during the validity of Rule 96(10), the said rule stood

omitted from the statute book on 08.10.2024 before the final order was passed on 30.01.2025. It was further argued that the omission was unconditional and without any saving clause preserving pending proceedings.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. Rule 96(10), which formed the very basis of the proceedings, had already been omitted from the statute book before passing of the impugned order.

2. Relying upon Kolhapur Canesugar Works Ltd. v. Union of India, the Court held that unconditional omission of a rule without a saving clause obliterates the provision from the statute book as if it had never existed.

3. Since no saving clause had been incorporated preserving pending proceedings and no substitute provision had been introduced, all actions based on omitted Rule 96(10) were required to stop from the date of omission.

Accordingly, the Court held that prima facie the Authorities lacked jurisdiction to pass the impugned order after omission of Rule 96(10) and therefore stayed operation of the order till disposal of the writ petition.

OUR COMMENTS

This judgment is important for understanding the legal consequences of omission of delegated legislation under GST law.

It highlights the critical role of saving clauses in sustaining tax proceedings post-amendment or omission. It underscores the principle that legal actions must rest on extant statutory provisions, and in their absence, pending actions lapse unless expressly preserved.

The Court reaffirmed that where a rule is omitted without

any saving clause preserving pending proceedings, authorities cannot continue adjudication or pass final orders solely on the basis of such omitted provision.

The ruling has significant implications for pending disputes relating to Rule 96(10) concerning export refunds and automatic IGST refunds.

CASE LAW 33

SURAJ MANGAR

VERSUS

ASSISTANT COMMISSIONER OF WEST BENGAL STATE TAX AND OTHERS.
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 104 of 2024 and IA No. CAN 1 of 2024 Arising out of W.P.A. No. 1905 of 2023	Section 54(7) and Section 56 of the WBGST Act, 2017; Rule 90(2) and Rule 92(3) of the WBGST Rules, 2017
Citation (2024) 22 Centax 202 (Cal.), (2025) 33 Centax 70 (Cal.)	
Dated 02-08-2024, 30-07-2025 respectively	

"…the statutory time limit of 60 days as stipulated in Section 54(7) of the Act is mandatory and non-compliance of the same vitiates any order passed in violation thereof under Section 54(5) of the Act."

— PARA 48, SABYASACHI BHATTACHARYYA AND UDAY KUMAR, J.J.

FACTUAL MATRIX

The Appellant, Suraj Mangar, filed a refund application on 24.12.2021 under Section 54 of the WBGST/CGST Act seeking refund of unutilized ITC relating to exports made

to Bhutan for the period February 2021 to August 2021. The acknowledgment under Rule 90(2) was issued on 10.01.2022, i.e., after expiry of the prescribed 15 days from the date of filing of refund application. Subsequently, a Show Cause Notice was issued on February 8, 2022, fixing the date of reply for February 23, 2022. This scheduled reply date fell outside the overarching 60-day outer limit prescribed under Section 54(7) of the Act for issuing a final order. The refund claim was rejected by the Proper Officer on grounds including absence of E-way bills, small business premises, and alleged discrepancies relating to export consignments to Bhutan. This rejection was affirmed by the Appellate Authority. Aggrieved thereby, the Appellant filed a writ petition before the Calcutta High Court which was dismissed by a single bench of the Hon'ble Calcutta High Court in WPA No. 1905 of 2023 vide an order dated 2 August 2024, leading to the present intra-court appeal.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court at Calcutta allowed the appeal and held that:

1. The 60-day time limit stipulated in Section 54(7) of the Act for issuing a refund order is mandatory and not directory. The Court observed that the use of the word "shall" in Section 54(7), coupled with strict interpretation applicable to taxing statutes, makes adherence to timelines compulsory.

2. It was further held that once acknowledgment under Rule 90(2) is issued, the Proper Officer loses the right to subsequently raise deficiencies regarding completeness of the refund application.

3. Non-adherence to the statutory timelines, including the 15-day limit for issuing an acknowledgment under Rule 90(2) and fixing the date of reply beyond the outer limit of 60 days, renders the entire proceedings vitiated.

4. The grounds for rejecting the refund were extraneous. Once the acknowledgment was issued, the application was deemed complete, precluding the officer from raising issues about the size of the premises or E-way bills.

5. Furthermore, the GST Authorities exceeded their jurisdiction by relying on Bhutan Customs information; their limited charter is only to verify the exports strictly limited to Indian Customs documents, which the appellant conclusively proved using documents such as Shipping bills, EGM details, and Let Export Orders.

Accordingly, The Hon'ble Division Bench set aside the judgment passed by the Learned Single Judge, the appellate order, and the refund rejection order and directed the respondents to grant refund along with interest under Section 56 within 30 days.

OUR COMMENTS

This judgment is a significant victory for taxpayers, strictly enforcing the statutory timelines binding the revenue authorities during the processing of GST refunds. By ruling that the 60-day limit under Section 54(7) is mandatory, the Calcutta High Court made it clear that administrative delays strip the department of its right to reject a claim. Additionally, the Court established a firm boundary on the jurisdiction of GST officers concerning exports, preventing them from embarking on roving inquiries into foreign customs data when valid clearance documents from Indian Customs have already been provided.

Overall, the judgment serves as a precedent promoting efficiency, certainty, and fairness in GST administration, ensuring that refund mechanisms, integral to the functioning of a value-added tax system, operate in a timely and legally consistent manner.

6. OCEAN FREIGHT

CASE LAW 34

UNION OF INDIA

VERSUS

MOHIT MINERALS PVT. LTD.
Supreme Court of India

Petition/Appeal No.	**Relevant Section/Rule**
1390, 1394, 1417, 1419, 1445 & connected matters of 2022	Section 5(1), 5(3) & 5(4) of the IGST Act, 2017; Section 2(30), 2(93) & Section 8 of the CGST Act, 2017; Notification No. 8/2017-I.T.(Rate) & Notification No. 10/2017-I.T.(Rate) dated 28-06-2017; Article 246A & 279A of the Constitution of India
Citation 2022 (61) G.S.T.L. 257 (S.C.)	
Dated 19.05.2022	

Import of goods by a CIF contract constitutes an 'inter-State' supply which can be subject to IGST, where the importer of such goods would be the recipient of the shipping service. Since in a CIF contract, the Indian importer is liable to pay IGST on the 'composite supply' comprising of supply of goods and supply of services of transportation, insurance, etc., a separate levy on the Indian importer for 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act. Recommendations of the GST Council are not binding on the Union and the States; the same are merely persuasive in nature.

— PARA 148, PER DR. DHANANJAYA Y. CHANDRACHUD, SURYA KANT AND VIKRAM NATH, J.J.

FACTUAL MATRIX

Mohit Minerals Pvt. Ltd. and other respondents import non-

coking coal from Indonesia, South Africa, and the United States by ocean transport on a Cost-Insurance-Freight (CIF) basis for supply to domestic industries. Under a CIF contract, the freight invoice is issued by the foreign shipping line to the foreign exporter, and the Indian importer has no direct privity of contract with the shipping line. The importer only pays customs duties (which include the value of ocean freight) at the time of import.

Prior to GST, ocean freight on import was exempt from service tax. With the advent of the GST regime, the Central Government issued Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 levying IGST at 5% on transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Simultaneously, Notification No. 10/2017-Integrated Tax (Rate) was issued, designating the Indian importer (as defined under Section 2(26) of the Customs Act, 1962) as the deemed 'recipient of service' liable to pay IGST on such ocean freight on a reverse charge basis.

The respondents challenged both notifications before the Gujarat High Court on the grounds that: (i) the Indian importer is not the 'recipient' of shipping services in CIF contracts, as consideration is paid by the foreign exporter to the foreign shipping line; (ii) levying IGST on ocean freight separately amounted to unconstitutional double taxation, since ocean freight is already included in the CIF value on which IGST is levied at the time of import; (iii) the impugned notifications were ultra vires the IGST and CGST Acts; and (iv) the transaction between two non-taxable entities (foreign exporter and foreign shipping line) lacks sufficient territorial nexus with India.

The Gujarat High Court upheld the challenge and struck down both notifications as unconstitutional. The Union of India filed appeals before the Supreme Court of India.

JUGDMENT/ORDER OF THE AUTHORITY

The Supreme Court of India (Dr. Dhananjaya Y.

Chandrachud, Surya Kant and Vikram Nath, JJ.) dismissed the appeals filed by the Union of India and affirmed the judgment of the Gujarat High Court. The Court's conclusions on the five key issues are as follows:

1. Non-Binding Nature of GST Council Recommendations: The Court held that the recommendations of the GST Council are merely persuasive and not legally binding on the Union and the States. This was reasoned on three grounds: (a) the deletion of the proposed Article 279B (which would have created a binding dispute settlement authority) from the Constitution Amendment Act, 2016 signals that Parliament intended the recommendations to be persuasive only; (b) Article 279A does not begin with a non obstante clause, and Article 246A does not state it is subject to Article 279A; and (c) while the Central Government is bound by GST Council recommendations when exercising its rule-making power under the CGST/IGST Acts, this does not mean all recommendations are binding on the Legislature's power to enact primary legislation. Parliament and State Legislatures possess simultaneous power to legislate on GST.

2. Indian Importer as Recipient of Shipping Service in CIF Contracts: The Court held that on a conjoint reading of Sections 2(11) and 13(9) of the IGST Act with Section 2(93) of the CGST Act, the import of goods on CIF basis can constitute an inter-State supply, and the Indian importer can be treated as the recipient of the shipping service. Section 13(9) creates a deeming fiction by which the place of supply of transportation services is the destination of goods (i.e., India). Since the supply is thus made to the Indian importer's location, the importer becomes the recipient under Section 2(93)(c) of the CGST Act.

3. Notification No. 10/2017 is Clarificatory, Not Ultra Vires on Reverse Charge: The Court held that the specification of the importer as the recipient by Notification No. 10/

2017 is only clarificatory. The Government did not specify a taxable entity different from the recipient as defined in Section 5(3) of the IGST Act. Both the IGST Act and the CGST Act define reverse charge and prescribe the entity to be taxed, and the notification is consistent therewith.

4. Section 5(4) of the IGST Act enables a Deeming Fiction: The amended Section 5(4) of the IGST Act (w.e.f. 01.02.2019) enables the Central Government to specify a class of registered persons as recipients, thereby conferring the power to create a deeming fiction through delegated legislation. Non-mention of the specific source of power does not vitiate the exercise of power, as long as such power exists in law.

5. Separate Levy on Ocean Freight Violates Composite Supply — Notifications Struck Down: Notwithstanding the above findings, the Court struck down the impugned notifications on the ground that a CIF transaction constitutes a 'composite supply' under Section 2(30) of the CGST Act, where the principal supply is the supply of goods. Under Section 8 of the CGST Act, read with Section 20 of the IGST Act, IGST on a composite supply must be levied only on the principal supply (i.e., supply of goods). The Indian importer already pays IGST on the entire CIF value (which includes ocean freight) at the time of import. Imposing a further IGST on the 'service' component of the same CIF transaction would directly violate Section 8 of the CGST Act and the scheme of GST legislation. The Court also rejected the Union's 'aspect theory' argument, holding that the Union cannot take contradictory positions — treating the two legs of the CIF transaction as connected (to identify the importer as recipient) and simultaneously as independent (to claim there is no double taxation).

The Supreme Court accordingly dismissed all the appeals

filed by the Union of India and affirmed the Gujarat High Court's judgment in favour of the assessees.

OUR COMMENTS

This is a landmark judgment of the Hon'ble Supreme Court of India that provides significant relief to importers by putting an end to the double levy of IGST on ocean freight in CIF imports. The Supreme Court held that once IGST had already been discharged on the CIF value of imported goods, which includes freight and insurance, a separate levy on ocean freight under reverse charge mechanism was unsustainable. The ruling also strongly reaffirmed the concept of "composite supply" under GST law by clarifying that naturally bundled elements of a transaction cannot be artificially separated through delegated legislation for imposing multiple taxes. This principle provides important protection to businesses against similar attempts to independently tax components such as freight, insurance, packing, or allied services already forming part of the overall transaction value.

The judgment is equally important from a constitutional perspective as the Supreme Court clarified that the recommendations of the GST Council are persuasive in nature and not binding on Parliament or State Legislatures. The Court emphasized the principle of cooperative federalism while recognizing the independent legislative powers of the Union and the States under the GST framework. From a practical standpoint, the decision provides substantial relief to industries such as steel, cement, power, and manufacturing sectors that regularly import goods on a CIF basis. Businesses that had paid IGST on ocean freight under the impugned notifications may also examine the possibility of claiming refunds, subject to the provisions relating to unjust enrichment and other procedural requirements under GST law.

7. EXPORT OF SERVICE

CASE LAW 35

M/S BIMAL JHUNJHUNWALA

VERSUS

THE ASSISTANT COMMISSIONER OF CGST & CX, BBD BAG I
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 1219 of 2023 with I.A. No. CAN 1 of 2023	Section 2(6) of the IGST Act, 2017 – Export of services – Receipt of remittance in convertible foreign exchange – Applicability of precedents under service tax regime.
Citation (2023) 9 Centax 321 (Cal.)	
Dated 18.08.2023	

The manner in which the decisions, which were referred to by the appellant, were not taken note of by the first respondent is incorrect.

— PARAS 3, PER T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The appellant had exported services and applied for a GST refund treating the transaction as an export of services under Section 2(6) of the IGST Act. The foreign client made payment through an overseas intermediary, WISE US Inc., which converted the remittance received in US Dollars into Indian Rupees and transferred the amount to the appellant's bank account in India through an authorized dealer bank. However, the adjudicating authority rejected the refund application on the ground that the consideration was not

received in convertible foreign exchange, thereby violating one of the essential conditions of "export of services" under the IGST Act. The appellate authority upheld the rejection, after which the appellant approached the Calcutta High Court challenging the order.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The Calcutta High Court, however, observed that since pari Materia provisions existed in the Service Tax era, authorities should have considered past judicial precedents before reaching a conclusion.

2. The High Court observed that the authorities failed to properly examine whether payment received in INR through an authorized foreign intermediary could be deemed receipt in convertible foreign exchange under FEMA/RBI regulations.

3. The court emphasized that the authorities should have analysed the applicability of earlier judgments relied upon by the assessee before rejecting the refund claim.

4. Since the matter was not thoroughly adjudicated by either the adjudicating authority or appellate authority, the High Court set aside both orders.

5. The case was remanded back for fresh consideration, with directions to provide the assessee an opportunity of personal hearing and pass a reasoned order in accordance with law.

OUR COMMENTS

The judgment reinforces that export-related refunds must be assessed holistically, considering past judicial precedents and industry practices. The service tax regime should not be ignored where similar legal provisions continue under GST. Overall, the decision promotes a more practical and fair

interpretation of export conditions while ensuring proper adjudication by tax authorities.

By remanding the case, the Court ensures that technical grounds do not unjustly deny exporters their rightful benefits, upholding fair and reasoned tax administration.

8. SECTION 74

CASE LAW 36

M/S TARA MARINE SYNDICATE PVT. LTD.

VERSUS

THE SUPERINTENDENT, RANGE III, BHOWANIPUR DIVISION, CGST & CX KOLKATA

High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 22353 of 2024 and CAN 1 of 2025	Section 74 of the CGST/ WBGST Act, 2017- Challenge to Show Cause Notice culminating into adjudication order- Separate cause for action
Citation (2025) 30 Centax 212 (Cal.)	
Dated 04.04.2025	

Once the show cause notice culminates into adjudication order, the order in original cannot be challenged by way of connected application. It gives rise to a separate cause for action.

— PARA 3, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The petitioner, Tara Marine Syndicate Pvt. Ltd., challenged the Show Cause-cum-Demand Notice dated 23.07.2024 issued under Section 74 of the CGST/WBGST Act in respect of the tax periods 2017-18 to 2019-20. During the pendency of the writ petition, the proper officer proceeded with the adjudication and passed an Order-in-Original dated 05.02.2025 confirming the proceedings initiated through the impugned show cause notice. Subsequently, the petitioner filed a connected application seeking to challenge the said

adjudication order within the same writ proceedings.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while disposing the writ petition elucidated that:

1. Once the impugned Show Cause Notice had culminated into an Order-in-Original, the adjudication order gave rise to a separate cause of action.

2. The petitioner could not challenge the adjudication order merely by filing a connected application in the pending writ petition against the Show Cause Notice.

3. Considering that the Show Cause Notice had already merged with the final adjudication order, the Court permitted the petitioner to challenge both the Show Cause Notice and the Order-in-Original together in a composite manner in accordance with law.

4. Accordingly, the writ petition along with the connected application was disposed of with liberty to the petitioner to avail appropriate legal remedies.

OUR COMMENTS

The judgment highlights an important procedural aspect of GST litigation relating to the effect of adjudication during the pendency of writ proceedings. The Calcutta High Court reaffirmed that once a Show Cause Notice culminates into an adjudication order, the original notice merges with the final order and cannot be independently challenged in the same manner as before. The Court emphasized that the adjudication order gives rise to a fresh and separate cause of action, which must be challenged through an appropriate legal proceeding.

The ruling reflects judicial discipline in procedural matters while also safeguarding the substantive rights of the assessee. The decision serves as guidance for taxpayers that

developments occurring during pending writ proceedings may require a fresh or modified legal strategy before the appropriate forum.

CASE LAW 37

M/S. SPEEDWAYS LOGISTICS PVT. LTD.

VERSUS

THE ADDITIONAL COMMISSIONER, CGST & CX, KOLKATA

In the High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 23717 of 2024 and CAN 1 of 2025	Section 74 of the CGST/ WBGST Act, 2017 – Challenge to SCN culminating into adjudication order – Separate cause of action.
Citation (2025) 30 Centax 73 (Cal.)	
Dated 25.04.2025	

Once a show cause notice culminates into an adjudication order, the Order-in-Original cannot be challenged by way of a connected application, as it gives rise to a separate cause of action.

— PARA 3, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Respondent Authorities had issued a show cause notice in Form GST DRC-01 dated 02.08.2024 under section 74 of the Central/West Bengal Goods and Service Tax Act, 2017 against the Petitioner. The Petitioner challenged the validity of the show cause notice by filing a writ petition before the Hon'ble High Court. During the pendency of the writ petition, the respondent authority passed an Order-in-Original dated 31.01.2025 for the tax period July 2017 to March 2020. In view of the subsequent adjudication order,

the issue before the Hon'ble Court was whether the Order-in-Original could be challenged through a connected application in the pending writ petition or whether it constituted a separate cause of action requiring an independent challenge.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while disposing the writ petition held as:

1. Since the show cause notice had already culminated into an adjudication order, a distinct cause of action had arisen and the dispute was no longer restricted merely to the show cause notice.

2. The Order-in-Original could not be challenged through a connected application in the pending writ petition.

3. The petitioner was granted liberty to challenge both the show cause notice and the adjudication order in a composite manner before the appropriate forum.

4. Accordingly, the Hon'ble High Court disposed of the writ petition by permitting the petitioner to challenge the show cause notice dated 02.08.2024 and the adjudication order dated 31.01.2025 in a composite manner before the appropriate forum, if advised.

OUR COMMENTS

This judgment lays down an important procedural principle in GST litigation. Once a show cause notice culminates into a final adjudication order, it gives rise to separate legal consequences and therefore constitutes an independent cause of action.

The judgment further clarifies that, after the passing of an adjudication order, the original order cannot be challenged by way of a connected application in the pending writ petition.

While disposing of the writ petition, the Hon'ble Court rightly observed that the assessee should challenge both the show cause notice and the final adjudication order together before the appropriate forum.

CASE LAW 38

M/S KUDDUS ALI

VERSUS

THE ASSISTANT COMMISSIONER OF CENTRAL TAX
High Court at Calcutta

Petition/Appeal No. W.P.A. No. 6004 of 2025 **Citation** (2025) 30 Centax 250 (Cal.) **Dated** 28.04.2025	**Relevant Section/Rule** Section 75(12) read with Sections 39, 61, 73 and 74 of the CGST/WBGST Act, 2017 – Recovery of self-assessed tax.

"Once, the self-assessed tax as per Section 37 is included in the return furnished under Section 39 of the said Act, Section 75(12) of the said Act can no longer be invoked."

— PARA 12, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

A notice in Form ASMT-10 was issued to the Petitioner identifying discrepancies in returns filed for FY 2020-21 and alleging short payment of tax. The Petitioner furnished an explanation regarding the discrepancies and delay in filing returns. Despite the explanation, the Department directly raised demand in Form DRC-07 and initiated recovery proceedings by invoking Section 75(12) of the CGST/WBGST Act without issuing any show cause notice under Sections 73 or 74.

JUGDMENT/ORDER OF THE AUTHORITY

1. The Hon'ble High Court interpreted Sec 75(12) and clarified that "Self-assessed tax" U/s 75(12) refers to tax payable on outward supply U/s 37 that are not included in the return U/s 39. As there was no discrepancy between the petitioner's GSTR-1 and GSTR-3B, provisions of Sec 75(12) could not have been invoked.

2. Further, The Hon'ble court clarified on whether the provisions under Section 73/74 be bypassed to determine and recover the interest and late fee by falling back on the provisions of Sec 75(12) for which the Hon'ble court held that in case the submission made by the petitioner was found unacceptable than proper adjudication U/s 65, 66, 67, 73 or 74 should have been initiated and not under Section 75(12) thereby remanding the matter back to the Department.

3. Accordingly, the order dated 20 December 2024 was set aside and the consequential DRC-07 demand dated 6 January 2025 was quashed. It was directed that the impugned order dated 20 December 2024 was to be treated as Show Cause Notice and petitioner was given liberty to reply to the same within three weeks of the Hon'ble High Court's order date.

OUR COMMENTS

This judgment clarifies that Section 75(12) cannot bypass the adjudication process under Sec 61 and under 73/74.

Further, it clarifies that Sec 75(12) can only be enforced when the self-assessed tax in Form GSTR-1 is not reported in Form GSTR-3B.

The Hon'ble High Court has clearly reaffirmed that recovery proceedings under Section 75(12) are limited only to cases where liability disclosed in GSTR-1 is not reflected in GSTR-

3B. Once the outward supply details have already been included in GSTR-3B, the department cannot mechanically invoke Section 75(12) for recovery without following adjudication procedures prescribed under Sections 73 or 74.

The decision is provides substantial relief to taxpayers facing coercive recovery proceedings based solely on discrepancies noticed during return scrutiny, particularly in cases involving interest or late fee demands. It also strengthens the principle that statutory adjudication mechanisms cannot be bypassed under the guise of "self-assessed tax" recovery.

CASE LAW 39

M/S MAPEX INFRASTRUCTURE PVT. LTD.

VERSUS

ADDITIONAL DIRECTOR
In the High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 22206 of 2024	Section 74 of the CGST/ WBGST Act, 2017 that deals with tax demand involving fraud, suppression, or wilful misstatement.
Citation	
(2024) 24 Centax 151 (Cal.)	
Dated	
01.10.2024	

"Ordinarily, in relation to a challenge to the show cause notice, no interference is called for. However, taking note of the fact that a jurisdictional issue has been raised, I am of the view that the matter may require further consideration".

— PARA 8, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The assessee, Mapex Infrastructure Pvt. Ltd., is a Special Purpose Vehicle (SPV) formed for execution of a highway project under the Build-Operate-Transfer (BOT) annuity model awarded by NHAI. Under the concession agreement, the assessee undertook construction, operation, and maintenance of NH-2 in West Bengal and received fixed annuity payments from NHAI instead of toll from the users.

Post GST implementation from 01.07.2017, the assessee received approximately Rs. 277.50 crore as annuity payments

during the period July 2017 to December 2019. It did not discharge GST on such receipts, claiming exemption under Entry 23A of Notification No. 12/2017 which exempts services relating to access to roads or bridges on payment of toll. The assessee also relied on NHAI's policy clarification stating that GST was not applicable on such receipts and accordingly, no tax was discharged.

Subsequently, CBIC Circular dated 17.06.2021 clarified that such exemption does not apply to annuity payments, followed by its withdrawal via Notification No. 15/2022. Consequently, a show cause notice dated 02.08.2024 under Section 74 was issued demanding Rs. 33.30 crore with interest and penalty, which the assessee challenged through a writ petition.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court observed that ordinarily, courts do not interfere at the stage of issuance of a show cause notice. The Hon'ble Court while admitting the petition took the following points into consideration and averred that:

1. Taking note of the fact that a jurisdictional issue has been raised, the matter requires further consideration. By taking into account the facts and circumstances of the instant case, an interim stay is granted to the assessee, bearing in mind the contention of the assessee that no case for invocation of Section 74 of the said Act has been made out by the department.

2. Determination, if any, shall be abided by the proper officer as per the final verdict of this instant writ petition.

Accordingly, the assessee was provided with an interim relief after recognizing the facts and circumstances of the instant matter.

OUR COMMENTS

Section 74 of the CGST Act, 2017 allows for the recovery of

taxes in cases of fraud, wilful misstatement, or suppression of facts. It can only be invoked when there is evidence of deliberate wrongdoing, such as intentional evasion of tax through fraudulent means or misrepresentation of facts. In the absence of these factors, Section 74 cannot be applied, and the tax authorities are restricted from imposing penalties or recovering taxes under this provision.

In the present matter, no such case for invocation of Section 74 of the said Act has been made out and hence an interim stay has been granted to the taxpayer.

9. PARALLEL PROCEEDINGS

CASE LAW 40

BAAZAR STYLE RETAIL LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. W.P.A. No.16185 of 2024	**Relevant Section/Rule** Section 6 read with Section 73 of Central Goods and Services Act, 2017/West Bengal Goods and Services Act, 2017
Citation (2024) 22 Centax 99 (Cal.)	
Dated 19.08.2024	

Where Central authorities had already initiated proceeding in which assessee had duly participated, proceedings and order passed by State authorities subsequently in respect of same tax period and subject matter were to be set aside.

FACTUAL MATRIX

The Petitioner, Baazar Style Retail Ltd., filed a writ petition before the Calcutta High Court challenging a show cause notice dated 27 December 2023 issued by the State GST authorities under Section 73 of the WBGST Act for the tax period April 2018 to March 2019, along with the subsequent adjudication order dated 27 April 2024. The Petitioner contended that the Central GST authorities had already initiated proceedings for the same tax period and subject matter by issuing a show cause-cum-demand notice on 30 September 2022, in which the petitioner had participated.

The dispute arose due to overlapping proceedings initiated by both Central and State GST authorities concerning the same or substantially similar subject matter and tax period. The Petitioner argued that such parallel proceedings were not permissible under the GST framework, particularly in light of statutory provisions governing jurisdiction and duplication of proceedings.

JUDGMENT/ORDER OF THE AUTHORITY

1. Since a show cause-cum-demand notice had already been issued by the Central authorities, and the show-cause notice issued by the State authorities covered the same subject matter (though partially), the impugned show cause notice and consequential order issued by the State authorities could not be sustained.

2. Accordingly, the show cause notice and the order issued by the State authorities were set aside and quashed.

3. The Court clarified that the order would not prevent the State authorities from proceeding against the petitioner in respect of periods or subject matters not covered by the earlier notice issued by the Central authorities.

4. Hence, the writ petition was disposed of with the above observations and directions, and no order as to costs was passed.

OUR COMMENTS

This decision reinforces the statutory bar on parallel proceedings under the GST regime, particularly under Section 6(2)(b), by clearly holding that once a competent authority (Central or State) has initiated action on a specific subject matter, the other authority cannot simultaneously or subsequently proceed on the same issue.

The ruling provides clarity against duplication of adjudication and protects taxpayers from multiple

proceedings for the same cause. At the same time, the Court balanced revenue interests by permitting action on distinct subject matters not already covered, thereby maintaining the federal structure of GST administration while ensuring procedural discipline.

CASE LAW 41

GOPESHWAR IRON & STEEL WORKS PVT. LTD.

VERSUS

SUPERINTENDENT OF CGST AND CX, RANGE 1
High Court at Calcutta

Petition/Appeal No. M.A.T. No. 1236 of 2023 and I.A. No. CAN 1 of 2023	**Relevant Section/Rule** Section 61 (Scrutiny of Returns) and Section 65 (Audit by Tax Authorities) of the CGST Act, 2017.
Citation (2023) 77 GSTL 195	
Dated 18.08.2023	

The scrutiny of return had been done by the Audit Department and audit has been conducted which has resulted in an order under Section 65 of the Act; hence issuance of fresh notice by the Range Officer raises a jurisdictional issue.

— PARA 8.

FACTUAL MATRIX

The petitioner, **Gopeshwar Iron & Steel Works Pvt. Ltd.**, was subjected to an audit by the GST Audit Department for a particular tax period, during which various documents were sought and furnished by the company. After examining the records, the Audit Department closed the proceedings and approved the matter through an order dated 25.03.2022. Subsequently, the DGGI also initiated proceedings for the same period and called for documents from the petitioner.

Despite these ongoing and completed proceedings, the Superintendent, CGST issued a fresh notice dated 17.04.2023 under Section 61 of the CGST Act seeking similar details. The petitioner challenged the notice before the Calcutta High Court on the ground that the issue for the same period had already been examined and settled, making the fresh proceedings without jurisdiction.

JUGDMENT/ORDER OF THE AUTHORITY

The Calcutta High Court held that the primary issue in the case was whether the Range Officer had jurisdiction to issue a fresh notice under Section 61 after completion of audit proceedings under Section 65 of the CGST Act. The Court observed that the Audit Department had already scrutinized the petitioner's records for the same tax period and had settled the matter through an order dated 25.03.2022. The Court further noted that proceedings initiated by the DGGI for the same period were already pending, and therefore the legality of issuing another notice required detailed examination. The Court further noted that proceedings initiated by the DGGI for the same period were already pending, and therefore the legality of issuing another notice required detailed examination. The Court directed the department to file its affidavit-in-opposition and ordered that the writ petition be heard and decided on merits in accordance with law.

OUR COMMENTS

The judgment highlights that once a GST audit for a particular period has been completed and the matter has been settled by the competent authority, initiation of fresh scrutiny proceedings for the same issue may raise serious jurisdictional concerns. The Court recognized the importance of protecting taxpayers from repetitive inquiries by different authorities on identical issues without proper legal basis.

The decision also emphasizes the need for coordination

among various GST authorities such as the Audit Department, Range Officers, and DGGI to avoid overlapping proceedings. At the same time, the Court did not finally decide the legality of the proceedings but granted interim protection until the matter could be examined in detail on merits.

CASE LAW 42

M/S JAI VENKTESH CONCAST PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF STATE TAX
High Court of Calcutta

Petition/Appeal No. M.A.T. No. 720 of 2023 with I.A. No. CAN 1 of 2023	**Relevant Section/Rule** Section 6 of the CGST Act, 2017 / WBGST Act, 2017 – Parallel proceedings by Central and State GST Authorities
Citation (2023) 7 Centax 173 (Cal)	
Dated 12.05.2023	

Considering the legal issue involved in this writ petition and also considering the peculiar facts and circumstances, we are of the view that recovery proceedings should remain stayed without imposing any pre-condition.

— PARA 6

FACTUAL MATRIX

The dispute concerned parallel proceedings initiated by both Central and State GST Authorities on the same subject matter. Proceedings had first been initiated by the Central Authorities, following which separate proceedings were also commenced by the State GST Authorities. The Assessee contended that such parallel proceedings were barred under Section 6(2)(b) of the GST Act and further challenged the condition requiring deposit of 20% of the disputed tax for

grant of interim protection from recovery proceedings.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court addressed the issue of parallel proceedings initiated by both State and Central GST authorities. The key issue in the case was whether the State GST authorities could initiate proceedings when the Central GST authorities had already issued a Show Cause Notice (SCN) for the same period. The Court noted that the Central GST authorities had initiated proceedings first, making the State proceedings potentially unlawful under Section 6(2)(b) of the WBGST Act, 2017, which prohibits parallel proceedings on the same subject matter.

OUR COMMENTS

The judgment in Jai Venktesh Concast Pvt. Ltd. v. Deputy Commissioner of State Tax highlights the protection available to taxpayers against coercive recovery when substantial legal issues are pending adjudication. The Court emphasized that once 10% pre-deposit had already been made, imposing an additional 20% deposit was unjustified. It also recognized the important issue of parallel proceedings by Central and State GST authorities under Section 6(2)(b) of the GST Act. The decision reflects a balanced approach in safeguarding the assessee's rights until the writ petition is finally decided.

CASE LAW 43

M/S J.K. CHEMICALS

VERSUS

THE ASSISTANT COMMISSIONER, ANTI EVASION, CGST & CX, KOLKATA NORTH
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 16303 of 2024	Section 65 read with Sections 73 and 74 of the CGST Act, 2017 / WBGST Act, 2017
Citation	
(2024) 22 Centax 334 (Cal.)	
Dated	
30.07.2024	

Ordinarily, no proceedings can be initiated for the period in respect of which audit has already been conducted and concluded after settlement of discrepancies through the prescribed procedure under Section 65 of the GST Act.

— PARA 9, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

This case addressed a jurisdictional issue where a Show Cause Notice (SCN) under Sections 73/74 was issued despite an audit already being conducted and settled under Section 65 of the CGST Act.

The Petitioner had already discharged the tax, interest and penalty liability pointed out during audit proceedings, following which the final audit report was issued by the Authorities. Despite conclusion of the audit, fresh

proceedings were initiated under Sections 73/74 for substantially overlapping periods.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court ruled that a Show Cause Notice (SCN) issued under Sections 73/74 for a period already covered by a concluded audit under Section 65 raises a jurisdictional issue. The Court acknowledged that the assessee had already responded to audit observations, made necessary payments, and received a final audit report. Given this, the issuance of a fresh SCN contradicts the settled audit findings and leads to duplication of proceedings. Recognizing the prima facie merit of the assessee's case, the Court directed the authorities to withhold the adjudication order pending resolution of the jurisdictional challenge, reinforcing the legal principle that once an audit is concluded, fresh proceedings on the same issues should not be initiated.

OUR COMMENTS

The judgment in J.K. Chemicals v. Assistant Commissioner, Anti Evasion, CGST & CX, Kolkata North reflects a balanced approach by the Calcutta High Court in protecting taxpayers from repeated proceedings for the same audit period while also preserving the department's statutory powers. The Court recognized that once an audit under Section 65 had concluded and liabilities were settled through DRC-03 payments, initiating fresh proceedings for the same period raised a serious jurisdictional concern. At the same time, since the show cause notice partly covered a different period, the Court did not quash the notice outright and instead allowed adjudication to continue subject to safeguards. The restraint on communicating the final adjudication order shows judicial caution to prevent prejudice to the assessee during pendency of the writ petition. Overall, the ruling strengthens the principle against duplication of proceedings and emphasizes procedural fairness under GST law.

CASE LAW 44

M/S KANCO TEA AND INDUSTRIES LTD.

VERSUS

THE UNION OF INDIA
High Court of Gauhati

Petition/Appeal No.	**Relevant Section/Rule**
WP (C) No. 3712 of 2024	Section 6 of the CGST Act, 2017 / Assam GST Act, 2017 – Parallel proceedings by State GST and Central GST Authorities – Jurisdiction to investigate inadmissible ITC.
Citation	
(2024) 23 Centax 37 (Gau.)	
Dated	
10.09.2024	

The Respondent Authorities more particularly the Respondent No.3 shall not carry out any further investigation in respect to such transaction of the Petitioner with M/s Ridhi Industries and M/s Amazonite Steels Private Ltd.

— PARA 8.

FACTUAL MATRIX

The petitioner, Kanco Tea and Industries Ltd., challenged summons issued by the CGST authorities alleging wrongful availment of Input Tax Credit (ITC) from three firms—M/s Ridhi Industries, M/s Amazonite Steels Pvt. Ltd., and M/s IESA Sales Pvt. Ltd. The petitioner contended that the State GST authorities had already investigated transactions relating to Ridhi Industries and Amazonite Steels, and therefore parallel investigation by Central GST authorities was barred under Section 6(2) of the CGST Act. During

proceedings, the CGST authorities accepted that investigation regarding the first two firms was already undertaken by State GST and agreed to close that aspect to avoid duplication. However, investigation concerning ITC availed from M/s IESA Sales Pvt. Ltd. had not been initiated by any other authority, and therefore DGGI sought permission to continue the probe. The High Court permitted investigation only in respect of IESA Sales Pvt. Ltd. and restrained further investigation regarding the other two firms.

JUGDMENT/ORDER OF THE AUTHORITY

The Gauhati High Court held that parallel investigation by Central GST authorities is not permissible where the State GST authorities had already investigated the same transactions relating to M/s Ridhi Industries and M/s Amazonite Steels Pvt. Ltd. under Section 6(2) of the CGST Act. The Court accepted the submission of the CGST authorities that investigation concerning ITC availed from the first two firms would be closed to avoid duplication of proceedings. Since no other authority had initiated investigation regarding ITC availed from M/s IESA Sales Pvt. Ltd., the Court permitted the DGGI/CGST authorities to continue investigation in respect of that entity. Accordingly, the writ petition was partly allowed by restraining further investigation into transactions with Ridhi Industries and Amazonite Steels, while allowing investigation relating to IESA Sales Pvt. Ltd. to proceed.

OUR COMMENTS

The judgment reinforces the principle that parallel proceedings by State GST and Central GST authorities on the same subject matter should be avoided to prevent duplication and harassment to taxpayers. The Court adopted a balanced approach by protecting the assessee from repeated investigation while permitting inquiry where no prior investigation had been undertaken. It also highlights the importance of coordination between GST authorities

under Section 6(2) of the CGST Act. The decision provides clarity on jurisdictional boundaries between State GST and DGGI authorities in matters relating to Input Tax Credit investigations.

CASE LAW 45

MAHABIR PRASAD KEDIA

VERSUS

THE ASSISTANT COMMISSIONER OF STATE TAX, HOWRAH AND KADAMTALA CHARGE AND OTHERS

High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT 2388 of 2023 + IA No. CAN 1 of 2023	Audit proceedings – Parallel proceedings by SGST and CGST Authorities – Keeping proceedings in abeyance where identical issue is pending adjudication
Citation	
(2024) 84 GSTL 91	
Dated	
09.01.2024	

The audit wing of the SGST Authority ought to keep the matter abeyance so far as the discrepancy note is concerned.

— PER T.S. SIVAGNANAM, J.

FACTUAL MATRIX

The case involves parallel proceedings by SGST and CGST authorities for 2017-2022. The SGST Audit Wing issued an audit memo highlighting discrepancies in the Petitioner's tax filings, despite an earlier Show Cause Notice (SCN) from the CGST Anti-Evasion Wing dated 28.03.2023 covering the same issues, which was still pending adjudication. Ignoring the ongoing CGST proceedings, the SGST Audit Wing issued another SCN.

JUGDMENT/ORDER OF THE AUTHORITY

The discrepancy was already under adjudication before the CGST authority, therefore, the subsequent SCN issued by the SGST Audit Wing is legally untenable. The Court further stated that the SGST authorities failed to consider the submissions made by the Petitioner and had acted prematurely, creating a situation of parallel proceedings for the same issue. Recognizing this conflict, the Court ruled in favour of the Petitioner, directing the SGST Audit Wing to keep all proceedings, including the SCN in abeyance until the CGST authority adjudicates the matter.

OUR COMMENTS

This case focuses on the importance of preventing different tax authorities from conducting overlapping proceedings on the same subject matter ensuring the maintenance of procedural efficiency and fairness in tax administration. Parallel proceedings can have serious consequences for both taxpayers and tax administration. The judiciary clarifies legal principles and offers guidance to mitigate unnecessary burdens.

CASE LAW 46

R. P. BUILDCON PVT. LTD.

VERSUS

SUPERINTENDENT, CGST & CENTRAL EXCISE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T No.1595 of 2022 I.A. No.CAN 1 of 2022	Section 65 of the CGST Act, 2017 (Audit by Tax Authorities) and Section 61 of the CGST Act, 2017 (Scrutiny of Returns).
Citation (2022) 1 Centax 284 (Cal.)	
Dated 30.09.2022	

Since the audit proceedings under Section 65 of the Act has already commenced, it is but appropriate that the proceedings should be taken to the logical end.

— PARA 7.

FACTUAL MATRIX

The petitioner, R.P. Buildcon Pvt. Ltd., was subjected to GST proceedings for FY 2017-18 to 2019-20 by multiple wings of the department simultaneously. The Audit Commissionerate had already initiated audit proceedings under Section 65 of the CGST Act and the petitioner had furnished the required documents and replies during the audit process.

While the audit proceedings were still pending, the Anti-Evasion Wing and the Range Office also issued notices for the same tax periods and issues. Aggrieved by such parallel

proceedings by different authorities of the same department, the petitioner approached the Calcutta High Court seeking quashing of the notices and protection against multiple proceedings for the same period.

JUGDMENT/ORDER OF THE AUTHORITY

The Calcutta High Court observed that three different wings of the GST department — Audit Commissionerate, Anti-Evasion Wing, and Range Office — were simultaneously proceeding against the petitioner for the same financial years 2017-18 to 2019-20. The Court noted that such parallel proceedings by the same department were improper. The Court recorded that audit proceedings under Section 65 of the CGST Act had already commenced first, and the petitioner had also responded to the audit objections by paying tax and interest on certain accepted issues while contesting the remaining issues. The department admitted before the Court that the different wings were unaware of each other's proceedings. The Court criticized the lack of coordination and remarked that in the era of electronic communication, such overlapping actions should not occur. The Court held that once audit proceedings under Section 65 had begun, those proceedings should be taken to their logical conclusion, and therefore the Anti-Evasion Wing and Range Office were restrained from proceeding further for the same tax period. The order of the Single Judge dismissing the writ petition was set aside, and the department was directed to issue proper show cause notices, provide opportunity of reply and personal hearing, and thereafter pass a speaking order in accordance with law.

OUR COMMENTS

This judgment highlights the importance of the need to prevent unnecessary duplicative investigations and ensure clear procedures for taxpayers. The courts consistently stress that parallel proceedings under both the CGST and SGST Acts for the same period should be avoided. The ruling

underscores a critical precedent in GST litigation, reinforcing that once an audit under Section 65 has been initiated, it takes precedence over any other proceedings for the same period. This decision prevents arbitrary and overlapping actions by different tax wings, ensuring greater transparency, efficiency, and taxpayer protection. Furthermore, the judgment serves as a reminder to tax authorities to maintain better internal coordination to avoid unnecessary duplication of proceedings. In conclusion, the Calcutta High Court's judgment provides much-needed clarity on the scope and procedural integrity of audit proceedings under the CGST Act.

CASE LAW 47

TRUVOLT ENGINEERING COMPANY PVT. LTD.

VERSUS

ADDITIONAL ASSISTANT DIRECTOR, DIRECTOR GENERAL OF GST INTELLIGENCE
High Court at Calcutta

Petition/Appeal No. WPA No. 2606 of 2025	**Relevant Section/Rule** Section 65 read with Section 67 of the CGST/ WBGST Act, 2017.
Citation (2025) 32 Centax 128 (Cal.)	
Dated 16-06-2025	

"…. the Central Authority should not be permitted to proceed simultaneously with regard to the period for which the State has been proceeding."

— PARA 8, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, Truvolt Engineering Company Pvt. Ltd., challenged the initiation of investigation proceedings by the DGGI on the ground that the State GST authorities had already initiated proceedings for the overlapping tax periods. The State authorities had earlier conducted audit proceedings under Section 65 of the CGST/WBGST Act, 2017 for the period April 2019 to March 2022 and had issued a Show Cause Notice dated November 29, 2024. Further, the State GST authorities had also initiated inspection, search and seizure proceedings under Section 67 of the Act pursuant

to a Panchnama dated August 22, 2024 for FY 2022-23 to FY 2024-25, which had not yet reached a logical conclusion. The Petitioner contended that simultaneous investigations by both the State GST authorities and the DGGI for overlapping periods subjected it to multiple and unwarranted enquiries on the same subject matter. On the other hand, the DGGI argued that there was no statutory bar under the Act prohibiting parallel proceedings or search and seizure actions by Central Authorities, particularly in cases involving allegations of fraud.

JUDGMENT/ORDER OF THE AUTHORITY

1. While the statute does not prima facie create a strict embargo on authorities proceeding simultaneously under Chapter XIII (Audit) and Chapter XIV (Inspection, Search, Seizure and Arrest), special provisions under Section 65(7) must be considered.

2. Ordinarily, registered taxable persons should not be subjected to multiple overlapping enquiries by different authorities without those authorities first bringing their respective search and seizure proceedings to a logical conclusion.

3. Since the State GST authority had already initiated search and seizure proceedings that were not yet concluded, the Central Authority (DGGI) should not be permitted to proceed simultaneously for the exact same period.

OUR COMMENTS

Consequently, the Court directed that any enquiry conducted by the DGGI authorities must be restricted strictly to the period for which proceedings had not already been initiated by the state.

This judgment provides an important safeguard for taxpayers against the harassment of parallel investigations by multiple GST Authorities. By holding that Central

Authorities should not proceed with simultaneous search and seizure operations for periods already covered by pending and unconcluded proceedings initiated by the State Authorities, the Calcutta High Court has reinforced the principle of jurisdictional discipline.

At the same time, the Court carefully balances revenue interests by clarifying that there is no absolute statutory bar on simultaneous proceedings; rather, such actions must be exercised judiciously to avoid overlapping enquiries. It ensures that while the revenue department's right to investigate fraud remains intact, the assessee is protected from duplicative and overlapping enforcement actions for the same tax periods.

10. RECOVERY OF TAX

CASE LAW 48

AMAR KUMAR SAHA

VERSUS

DEPUTY COMMISSIONER OF REVENUE, DIRECTORATE OF REVENUE INTELLIGENCE & ENFORCEMENT

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT No. 714 of 2022 with I.A. Nos. CAN 1 & 2 of 2022	Section 74 of Central Goods and Services Tax Act, 2017 -Article 226 of Constitution of India.
Citation	
2022 (64) G.S.T.L. 69 (Cal.)	
Dated	
22.01.2024	

Where any recoveries close to 20% of entire demand has been made Department could not make any further recovery during pendency of writ petition challenging show cause notice and demand

— PARA1, PER T.S SIVAGNANAM, C.J. & HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The Appellant (Amar Kumar Saha) filed a writ petition before the Calcutta High Court challenging an order passed under Section 74(9) of the CGST/SGST Act. The show cause notice raised a total demand of approximately Rs. 4.93 crores.

During the adjudication process, the Appellant had paid Rs. 50 lakhs voluntarily. Subsequently, the Department further

recovered Rs. 40 lakhs by debiting the Appellant's credit ledger account, bringing the total amount recovered to close to 20% of the entire demand.

The Learned Single Bench had directed the respondents to file their affidavit-in-opposition without granting any interim order protecting the Appellant. The Department continued to recover amounts from the Appellant's credit ledger even during the pendency of the writ petition. The Appellant filed this intra-Court appeal (MAT) aggrieved by the absence of an interim stay on further recovery.

A specific ground raised in the writ petition pertained to the jurisdiction of the authority to issue the show cause notice and to adjudicate the matter a jurisdictional objection that, it was argued, could be raised at any point of time.

JUGDMENT/ORDER OF THE AUTHORITY

The Division Bench of the Calcutta High Court (T.S. Sivagnanam and Hiranmay Bhattacharyya, JJ.) disposed of the intra-Court appeal in favour of the assessee and granted relief against further recovery, observing as follows:

1. Had the Appellant preferred a statutory appeal, he would have been required to pre-deposit only 10% of the disputed tax. Since close to 20% of the demand had already been recovered, the interest of revenue was amply safeguarded.

2. Any recovery proceedings initiated prior to the expiry of the period of limitation for filing a statutory appeal (i.e., prior to 28th May, 2022) had no sanction of law, as such recoveries would effectively render the appellate remedy infructuous.

3. Having regard to the above, the Court directed that no further recovery shall be made from the Appellant until the writ petition is heard and disposed of by the Learned Single Bench.

The Court also set a timeline for filing affidavit-in-opposition (by 20th June, 2022), sharing a soft copy with the Appellant's counsel (by 19th June, 2022), and filing any reply by the Appellant (by 22nd June, 2022), after which the matter was to be listed before the Single Bench for final hearing.

OUR COMMENTS

Coercive recovery proceedings should not defeat or frustrate the statutory right of appeal available to an assessee under GST law. The Court recognized that once substantial recovery exceeding the statutory pre-deposit requirement had already been made, continuation of further recovery during pendency of judicial proceedings would be unjustified.

The judgment provides significant protection to taxpayers against premature and excessive recovery actions by the department, particularly during the period available for filing statutory appeals or when jurisdictional issues are under consideration before constitutional courts.

CASE LAW 49

M/s. JYOTI TAR PRODUCTS PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX, SHIBPUR CHARGE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA No. 1352 of 2025	Section 107 of the CGST Act, 2017
Citation	
(2025) 30 Centax 87 (Cal.)	
Dated	
07.04.2025	

….instead of seeking response from the respondents whether any amount has already been recovered from the petitioners in the manner as aforesaid, the matter can be disposed of by directing the respondents themselves to consider whether the aforesaid recovery as disclosed by the petitioners through the copy of the electronic liability ledger

— PARA 08, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The appellant received a tax demand for April 2022–March 2023, filed an appeal under Section 107, and paid the required pre-deposit, but the appeal was dismissed on 24 December 2024.

The company then informed the department of its intention to appeal to the Appellate Tribunal and deposited an additional 10% of the disputed tax, though the Tribunal was

not yet functional. Despite this, the department recovered about ₹ 50,000 from the company's ledgers, which the company challenged as illegal since it had already complied with all necessary requirements to stay recovery.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that the petitioner had filed an appeal under Section 107 and had duly deposited the admitted amount of pre-deposit. After the appeal was dismissed, the company intended to file a further appeal to the GST Appellate Tribunal but could not do so because the Tribunal was not yet constituted.

Meanwhile, the petitioner had already paid the additional 10% of the disputed tax amount as required. Despite this, the department proceeded to recover ₹ 50,330 from the company's electronic cash and credit ledgers, which the company challenged as illegal. The Court then ordered the department to verify if it had taken about ₹ 50,330 from the company's ledger, and if it had, to return (re-credit) that amount to the company's ledger immediately, so that the same is reflected in the electronic liability ledger of the petitioners for the month of May 2025.

OUR COMMENTS

The judgment in Jyoti Tar Products Pvt. Ltd. v. Deputy Commissioner of State Tax, Shibpur Charge reinforces the judicial protection available to taxpayers during the transitional period caused by the non-constitution of the GST Appellate Tribunal. The Hon'ble Calcutta High Court recognized that once the assessee had expressed its intention to prefer an appeal before the Tribunal and had complied with the additional mandatory pre-deposit requirement under Section 112(8), coercive recovery proceedings could not continue merely because the Tribunal was not operational.

The Court gave significant importance to the CBIC Circular dated 11.07.2024 and the corresponding West Bengal Trade Circular, thereby affirming that recovery proceedings remain stayed upon payment of the additional pre-deposit contemplated under Section 112. The decision further strengthens the growing line of precedents holding that taxpayers cannot be prejudiced for the administrative failure of the Government in constituting the Appellate Tribunal.

The ruling is also significant because it reiterates that the right of appeal is a substantive statutory right and such right cannot be defeated due to the absence or delayed operationalization of the Tribunal contemplated under Section 109 of the CGST/WBGST Act. Consequently, the decision adds to the consistent judicial approach adopted by several High Courts in safeguarding taxpayers against arbitrary recoveries pending availability of the appellate forum.

11. ORDER BEYOND SCN

CASE LAW 50

DUAKEM PHARMA PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF REVENUE
In the Calcutta High Court

Petition/Appeal No. W.P.A. No. 9951 of 2025	**Relevant Section/Rule** Section 75(7) read with Section 73 of the CGST/WBGST Act, 2017 – adjudication order cannot travel beyond the grounds mentioned in the Show Cause Notice (SCN).
Citation (2026) 39 Centax 16 (Cal.) /2026 (106) G.S.T.L. 139 (Cal.)	
Dated 21-01-2026	

"It is now well-settled that a notice to show cause should clearly specify all the charges/grounds that the noticee is required to meet and answer."

— PARA 13, PER OM NARAYAN RAI, J.

FACTUAL MATRIX

The Petitioner, Duakem Pharma Pvt. Ltd., received a Show Cause Notice under Section 73 of the CGST/WBGST Act alleging that Input Tax Credit (ITC) was required to be reversed in proportion to exempt supplies. In response, the Petitioner submitted that it had purchased exempted goods and subsequently sold them as exempt outward supplies, and therefore no liability for reversal of ITC arose under the provisions of the GST law.

However, while passing the adjudication order, the Proper Officer travelled beyond the allegations contained in the Show Cause Notice and introduced a new ground by stating that the invoices failed to establish that the goods supplied by the Petitioner qualified as exempted products. On this basis, tax demand and ITC reversal liability were imposed. Aggrieved by the adjudication order passed on grounds not mentioned in the Show Cause Notice, the Petitioner approached the Calcutta High Court challenging the legality and validity of the impugned order.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court held that the Show Cause Notice only raised the issue of reversal of ITC relating to exempt supplies and did not dispute whether the goods sold by the Petitioner were exempted goods.

The Court observed that the adjudicating authority travelled beyond the scope of the SCN by introducing a new ground that the goods supplied by the Petitioner were not exempted products, without giving the Petitioner an opportunity to respond.

The Court clarified that under Section 75(7) of the CGST Act, an adjudication order must be confined to the grounds mentioned in the SCN. Accordingly, the adjudication order was set aside with liberty to the department to initiate fresh proceedings in accordance with law.

OUR COMMENTS

This judgment reaffirms the well-settled legal principle that an adjudication order cannot be passed on grounds which are not mentioned in the Show Cause Notice (SCN). The Hon'ble Calcutta High Court clarified that introducing new allegations at the stage of adjudication violates the principles of natural justice as well as the provisions of Section 75(7) of the CGST Act.

CASE LAW 51

VEDANT ROAD CARRIERS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF WEST BENGAL STATE TAX, JORASANKO AND JORA BAGAN CHARGE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA No. 12654 of 2025	Section 75(7) of the CGST Act, 2017
Citation	
(2026) 38 Centax 234 (Cal.)	
Dated	
14.01.2026	

An order cannot travel beyond the confines of the preceding Show Cause Notice.

-PARA 13, PER OM NARAYAN RAI, J.

FACTUAL MATRIX

The Petitioner, Vedant Road Carriers Pvt. Ltd., a Goods Transport Agency (GTA), challenged the adjudication order dated 17.05.2023 passed under Section 73 of the CGST/ WBGST Act, along with the appellate order dated 25.04.2025 passed under Section 107. The dispute arose from six Show Cause Notices (SCNs) issued on 15th March 2023 for FYs 2017-18 to 2022-23 alleging under-reporting of outward supplies in GSTR-3B based on data available in the GST Back Office.

The SCNs dated 15.03.2023 required the Petitioner to file

replies and attend personal hearing on 31.03.2023. The Petitioner sought additional time to submit detailed replies considering the multiplicity of notices, but the request was not entertained by the department.

Subsequently, the adjudication order confirmed demand on an altogether different ground. Instead of alleged suppression of turnover, the Proper Officer held that since the Petitioner had opted for Forward Charge Mechanism (FCM) by issuing a tax invoice on 10.04.2018, all supplies during the relevant period were liable to tax under FCM in terms of Notification No. 20/2017-Central Tax (Rate). The Petitioner contended that all supplies had actually been made under Reverse Charge Mechanism (RCM).

The appellate authority acknowledged that the adjudication order travelled beyond the SCN but treated the issue as a mere technical defect and upheld the demand, leading to the present writ petition before the Hon'ble Calcutta High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court allowed the writ petition and set aside both the adjudication order and the appellate order. The Court held that the SCN was confined only to alleged under-declaration of turnover, whereas the adjudication order proceeded entirely on the issue of liability under the Forward Charge Mechanism, which was never proposed in the SCN.

Relying upon Section 75(7) of the CGST/WBGST Act, the Court observed that no demand can be confirmed on grounds other than those specified in the SCN. The Court held that the adjudicating authority had fundamentally altered the basis of the proceedings, which was impermissible in law.

The Court further observed that the SCNs were based on GST Back Office portal data, which was within the exclusive

knowledge and control of the department and not ordinarily accessible to the taxpayer. Consequently, the Petitioner was denied a meaningful opportunity to rebut the allegations, thereby violating principles of natural justice.

Accordingly, the matter was remanded to the Proper Officer for fresh adjudication with liberty to issue additional SCNs on proper grounds after furnishing all relevant material and granting adequate opportunity of hearing to the Petitioner.

OUR COMMENTS

This judgment reaffirms the settled principle that adjudication under GST cannot travel beyond the allegations contained in the Show Cause Notice. The Hon'ble Calcutta High Court emphasized that Section 75(7) of the CGST/WBGST Act expressly prohibits confirmation of demand on grounds not specified in the SCN, and such statutory safeguard cannot be treated as a mere procedural technicality.

The ruling further underscores that where an SCN is based on departmental data, such as information available on the GST Back Office portal, the same must be furnished to the taxpayer to ensure an effective opportunity of defence. The decision thus serves as an important precedent against adjudication orders founded on undisclosed material or on grounds beyond the scope of the SCN, reaffirming the importance of natural justice in GST proceedings.

12. JURISDICION OF ADJUDICATING AUTHORITY

CASE LAW 52

M/S HAHNEMAN'S JAC OLIVOL GROUP OF PRODUCTS PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF STATE TAX
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT/1425/2023 (with MAT/1426/2023), IA No. CAN/1/2023	Principles of Natural Justice – Premature challenge to Preliminary Report; Bureau of Investigation's jurisdiction to issue Show Cause Notice; Right to file Reply and Personal Hearing under GST law
Citation	
Dated 29.09.2023	

The appellants should participate in the adjudicating proceedings by filing an appropriate reply to the show cause notice dated 23.08.2023. In reply to the show cause notice, the appellants are entitled to raise all factual and legal issues including the issue that the Bureau of Investigation cannot act or function as an adjudicating authority to adjudicate the show cause notice.

— PARA 12, PER T. S. SIVAGNANAM, C.J. & HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

These two intra-court appeals (MAT 1425/2023 and MAT 1426/2023) were filed before the Division Bench of the Calcutta High Court challenging the orders of a learned Single Bench dated 17th July, 2023 in WPA 13343 of 2023 and WPA 13349 of 2023 respectively. The Appellants are JAC

Olive Products Pvt. Ltd. (and another) and Hahnemanns Jac Olivol Group of Products Pvt. Ltd. (and another) — both being the same group of assessees, with the only difference being the period for which the GST proceedings were initiated.

The sequence of events leading to the appeals was as follows:

The Deputy Commissioner, State Tax Bureau of Investigation (STB), South Bengal, drew a Preliminary Investigation Report dated 02.06.2023 in respect of the Appellants.

The Appellants filed Writ Petitions (WPA 13343/2023 and WPA 13349/2023) before the Single Bench challenging this Preliminary Report, contending it was premature and violated principles of natural justice.

The learned Single Bench dismissed the writ petitions as premature vide order dated 17.07.2023.

After the Single Bench order, the authority drew a Final Report dated 24.07.2023 and communicated the same to the Appellants, granting them an opportunity to file their rebuttal.

The Appellants could not file their rebuttal to the final report, citing a pending application before the Special Commissioner.

Subsequently, a Show Cause Notice (SCN) in Form GST DRC-01A was issued on 23.08.2023 (in MAT 1426/2023). However, in MAT 1425/2023, the SCN was yet to be issued as of the date of hearing.

Before the Division Bench, the Appellants raised two principal contentions:

The annexure to Form GST DRC-01A did not explicitly narrate the allegations against the Appellants but merely referred to the final report dated 24.07.2023 — making the pre-SCN notice non-specific and hence defective. Reliance was placed on the Supreme Court decision in Oryx Fisheries

Private Limited v. Union of India, reported in 2011 (266) ELT 422 (SC), to argue that a Show Cause Notice cannot pre-judge the issue.

The Bureau of Investigation, South Bengal Headquarters, is not an adjudicating authority and therefore has no jurisdiction to issue the Show Cause Notice.

JUGDMENT/ORDER OF THE AUTHORITY

The Division Bench, comprising the Hon'ble Chief Justice T. S. Sivagnanam and Hon'ble Justice Hiranmay Bhattacharyya, dismissed both appeals vide order dated 29.09.2023, with the following significant directions and observations:

On the challenge to the Preliminary Report:

1. The Division Bench fully agreed with the Single Bench's finding that the challenge to the Preliminary Report was premature. The challenge had, in any event, become infructuous because a Final Report had already been drawn on 24.07.2023 and a Show Cause Notice had been issued on 23.08.2023 — meaning the proceedings had moved well past the preliminary stage.

2. On the DRC-01A annexure and pre-judging of the issue:

   The Court took a prima facie view that the annexure to Form GST DRC-01A cannot be treated as a Show Cause Notice. However, it noted that the formal SCN dated 23.08.2023 had already been issued and, on perusal, it could not be said that the authority had pre-judged the matter. The SCN took into account the allegations in the final report and proceeded to issue notice — which is the correct procedure.

3. On jurisdiction of the Bureau of Investigation to issue the SCN:

   The Court declined to decide this issue at this stage. Instead, it directed that the Appellants shall raise this

jurisdictional objection in their reply to the Show Cause Notice, and the adjudicating authority shall decide it as the first and primary contention, before proceeding on the merits.

4. On the right to reply and personal hearing:

   Noting that the time limit for submitting the explanation/reply to the SCN had already expired, the Division Bench extended time and directed the Appellants to submit their reply to the SCN not later than 16th October, 2023.

5. The authority was directed to fix a date for personal hearing (preferably after the Puja holidays) and, after affording an effective opportunity to the authorised representative of the Appellants, proceed to take a decision on merits in accordance with law.

6. On MAT 1425/2023 (SCN yet to be issued):

   In the case covered by MAT 1425/2023, the SCN was yet to be issued. The Division Bench directed the concerned authority to issue the SCN in that matter as well, and granted reasonable time to the Appellants to submit their reply. Since the issues in both matters were common, both SCNs were directed to be adjudicated jointly on a date to be fixed by the authority.

7. The ruling was accordingly against the Appellants on the challenge to the preliminary report and the premature writ petitions. However, the Court safeguarded the Appellants' rights by directing personal hearing and preserving all legal and factual contentions — including the jurisdictional challenge — for adjudication at the SCN reply stage.

OUR COMMENTS

This Division Bench ruling of the Calcutta High Court lays

down a clear procedural framework for taxpayers facing GST investigation and enforcement proceedings under the State Tax Bureau of Investigation. Several important principles emerge from this judgment:

First, challenges to Preliminary Investigation Reports are inherently premature and are unlikely to succeed at the writ stage. The Court has reinforced the position that the proper stage to challenge proceedings is once a final report and a formal show cause notice are in place. Filing writ petitions at the preliminary report stage wastes judicial time and provides no practical relief.

Second, the Court has preserved an important taxpayer right: where a jurisdictional objection is raised (such as a challenge to the authority of the Bureau of Investigation to act as an adjudicating authority), the adjudicating authority is bound to decide that jurisdictional issue first, before proceeding to the merits of the allegations. This is a significant safeguard that taxpayers can invoke whenever there is a doubt as to the competence of the issuing authority.

Third, even though the formal time limit for filing a reply to the SCN had expired, the Division Bench exercised its jurisdiction to extend time and ensure the Appellants had a fair opportunity to respond. This underscores the principle that adherence to natural justice cannot be sacrificed on the altar of procedural time limits — courts will intervene to protect the right of hearing.

Fourth, for taxpayers facing investigation by the STB or similar bodies, the practical takeaway is: do not rush to court at the preliminary report stage. Instead, participate actively in the adjudicating proceedings, file a detailed reply to the SCN raising all factual and legal contentions (including jurisdiction), and await a personal hearing. Judicial intervention is far more effective — and more likely to succeed — once an adverse adjudicating order is passed.

CASE LAW 53

KUNJAL SYNERGIES PRIVATE LIMITED

Versus

ASSISTANT COMMISSIONER OF CGST & CX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No.2333 of 2023 and IA No. Can 1 of 2023	Section 73 read with Section 140 and Section 174 of the CGST Act, 2017/ WBGST Act, 2017
Citation (2025) 28 Centax 198 (Cal.)	
Dated 11.03.2025	

When a jurisdictional issue is being canvassed before us, the alternate remedy provided under the CGST Act would not operate as a restriction for this Court to decide upon the jurisdiction of the respondents to issue the show-cause notice invoking the provisions of the CGST Act.

— PARA 11, T. S. SIVAGNANAM, C.J. AND CHAITALI CHATTERJEE (DAS) J.

FACTUAL MATRIX

The assessee, previously registered under the earlier Central excise and Service tax regime, had migrated to the GST regime with effect from July, 2017 and had filed Form TRAN 1 to carry forward their unutilized CENVAT credit into the GST regime. The assessee proactively had also disclosed the credit amount during the 2015-16 audit, seeking its utilisation in 2016-17.

In the instant matter, the dispute arose when revenue

authorities issued a show cause notice against the assessee challenging the admissibility and carrying forward of the said credit after almost a period of four years of continuous communication with the department, thereby raising a question of jurisdictional and timing deficiencies on the part of the department.

Being aggrieved with such, the assessee approached the Hon'ble High Court.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Division Bench of the High Court while placing reliance upon the case of **Usha Martin Limited vs. Additional Commissioner, Central GST and Excise, Jamshedpur and Ors,** held as follows:

1. The question that arose was that **whether a registered person could transition inadmissible CENVAT Credit of the existing regime to the G.S.T. regime under section 140 of the C.G.S.T. Act without any check or proceeding against him**.

2. Taking note of Section 174 of the CGST Act, 2017, it is obvious that the new regime had to make provisions for the transactions which remained incohate under the existing law. It is also a well-settled legal position that on account of the new legislation the implementation of the G.S.T. regime could not be left to a realm of uncertainty. For a violation under the existing law, parallel proceedings could not be conducted under the existing law at the behest of jurisdictional officer and at the same time under the new law at the instance of another jurisdictional officer of the G.S.T. Act.

3. **If proceedings for transition of CENVAT Credit alleged to be inadmissible is permitted to be carried under the C.G.S.T. Act, it may lead to uncertainty not only in the minds of the ordinary citizen but also in the minds of the Tax authorities. In some cases a jurisdictional**

proper officer under the C.G.S.T. Act may initiate proceedings under the provisions of the C.G.S.T. Act for such contravention. In other cases, the competent jurisdictional officer may initiate proceedings under the existing law i.e. the C.E.A. and Finance Act for the same contravention in view of the repeal and saving provisions under Section 174 of the C.G.S.T. Act and such a course cannot be countenanced in law.

4. It has to be considered whether the initiation of proceedings by the Respondent No.1 therein under Section 73 of the CGST Act for alleged contravention of the Central Excise Act and Finance Act read with CENVAT Credit Rules against the petitioners therein by filing TRAN 1 in terms of Section 140 of the CGST Act for transition of CENVAT credit as being inadmissible under the existing law or beyond his jurisdiction.

5. We have no hesitation to hold that the impugned show-cause notice is without jurisdiction and also the order passed by the Ld. Single Bench is set aside.

6. The respondent authorities are at liberty to initiate proceeding under the provisions of the then existing law. However, such proceedings should be in accordance with law. The expression "in accordance with law" is added with the purpose because the liberty should not be construed to be a liberty **de hors the provisions of law.**

OUR COMMENTS

The above finely reasoned judgment of the Hon'ble Division Bench stands as a landmark in tax jurisprudence, highlighting procedural fairness and validating good faith disclosures by taxpayers during transition from pre-GST to the GST regime. One must determine whether initiating proceedings under Section/ 73 of the CGST Act, for alleged violations of the Central Excise Act, Finance Act, and CENVAT Credit Rules, based on their TRAN 1 filing under

Section/ 140 for transitioning CENVAT credit, is inadmissible under the existing law or beyond the adjudicating officer's jurisdiction.

Section 73 does not empower CGST authorities to adjudicate the admissibility of pre GST CENVAT credits claimed via TRAN 1, especially when those credits were never previously assessed. It does not apply to transition credits and using it to question Cenvat claims via TRAN-1 is beyond jurisdiction under Section/ 174's repeal and saving provisions.

13. SECTION 95-100 ADVANCE RULING

CASE LAW 54

GAYATRI PROJECTS LIMITED

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, DURGAPUR

High Court of Calcutta

Petition/Appeal No. M.A.T No. 2027 of 2022 and I.A. No. CAN 1 of 2022	**Relevant Section/Rule** Sections 95, 98 and 100 of the CGST ACT, 2017 / West Bengal GST Act, 2017
Citation (2024) 23 Centax 374 (Cal.)	
Dated 05-01-2023	

The appellants cannot be nonsuited by virtue of an order, which was passed by the authority without hearing them

— PARA 09, PER TS SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYA J.

FACTUAL MATRIX

Eastern Coalfields Ltd. filed an application before the West Bengal Authority for Advance Ruling (WBAAR) seeking clarification regarding admissibility of Input Tax Credit ("ITC") on invoices issued by Gayatri Projects Ltd. for the months of January to March 2020.

The WBAAR vide its order held that ITC was not admissible to Eastern Coalfields Ltd. since the supplier, namely Gayatri Projects Ltd. (the Appellant), had uploaded Form GSTR-1

and Form GSTR-3B belatedly in November 2020.

The Appellant contended that although the ruling directly affected invoices raised by them and had serious financial implications, they were neither impleaded as a party nor granted an opportunity of hearing in the advance ruling proceedings.

Subsequently, the recipient withheld GST payment payable to the Appellant. Aggrieved thereby, Gayatri Projects Ltd. filed a writ petition before the Hon'ble Calcutta High Court alleging violation of their constitutional and legal rights. Upon refusal of interim relief by the learned Single Bench, the matter was carried in intra-court appeal before the Division Bench.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Division Bench observed that the Appellants, being registered dealers under the GST Act, clearly qualify as 'applicants' under Section 95(c) and are undoubtedly 'aggrieved persons' against the advance ruling. The mere fact that Eastern Coalfields (the original applicant) chose not to prefer an appeal cannot prejudice the rights of the Appellants, who were directly affected by the ruling but were never parties to it.

The Court took note of the fact that the supplier could not be adversely affected by an order passed behind its back, particularly when the ruling had civil and monetary consequences upon the supplier's business transactions.

OUR COMMENTS

Accordingly, the appeal and the writ petition were allowed, and the order of the WBAAR dated 09-08-2021 was set aside. The matter was remanded to the WBAAR for fresh consideration, with directions to issue notice to both the Appellants and Eastern Coalfields, hear all parties afresh and pass a fresh order on merits and in accordance with law.

This judgment reiterates the principle of natural justice that no adverse order affecting the rights of a person can be passed without granting such person an opportunity of hearing.

The ruling assumes considerable importance in GST jurisprudence as it acknowledges that procedural determinations concerning ITC eligibility may have serious downstream consequences upon suppliers, including withholding of payments and disruption of contractual rights. The judgment thus reinforces the doctrine that substance and fairness must prevail over procedural technicalities and that authorities exercising quasi-judicial functions are bound to adhere to principles of fairness, transparency, and natural justice.

The Hon'ble Court has rightly observed that even though the advance ruling proceedings were initiated by the recipient, the findings recorded therein had a direct and adverse impact upon the supplier's commercial and financial interests. Therefore, supplier cannot be excluded from the proceedings merely because it is not the applicant before the Advance Ruling Authority.

CASE LAW 55

WEST BENGAL AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX

VERSUS

ANMOL INDUSTRIES LTD.
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
SLP (Civil) Diary No(s). 9103 of 2024	Section 97 of the Central Goods and Services Tax Act, 2017 (CGST Act)
Citation (2024) 25 Centax 54 (S.C.)	
Dated 18.11.2024	

The constitutional courts are meant to resolve real and subsisting disputes, not issue overtaken by later events.

— PARA 2, 3, 4 PER PAMIDIGHANTAM SRI NARASIMHA AND MANOJ MISRA, J.J.

FACTUAL MATRIX

Anmol Industries Ltd. (the Respondent/Assessee), being a GST-registered recipient of services, filed an application for Advance Ruling before the West Bengal Authority for Advance Ruling (AAR) seeking a ruling on the applicability of an exemption notification.

The AAR concluded that the Applicant, being a recipient of services and not a supplier, was not entitled to maintain an application for advance ruling and accordingly dismissed the application on grounds of lack of locus standi.

Aggrieved, the Assessee approached the Calcutta High Court, which held that a GST-registered applicant is entitled to maintain an application for advance ruling even if it is a recipient of services, provided the ruling is sought on the applicability of an exemption notification. The High Court reasoned that such an issue falls within the scope of Section 97(2)(b) of the CGST Act, 2017 and accordingly remanded the matter back to the AAR for fresh consideration.

The West Bengal AAR thereafter filed a Special Leave Petition (SLP) before the Supreme Court of India challenging the High Court's order.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court, after condoning the delay, was informed by the learned counsel appearing for the Respondent that pursuant to the High Court's impugned order, the Advance Ruling Authority had already passed a fresh order in the matter, and that said order was under challenge before the Appellate Authority of Advance Ruling (AAAR).

In light of these subsequent developments, the Supreme Court held that the issue arising for consideration in the SLP had become infructuous. The SLP was accordingly dismissed as infructuous. The SLP was thus dismissed in favour of the Assessee.

OUR COMMENTS

This ruling is significant as it reinforces the principle that a GST-registered recipient of services is also entitled to seek an advance ruling on the applicability of exemption notifications under Section 97(2)(b) of the CGST Act, 2017. Although the Supreme Court dismissed the SLP as infructuous, it did not disturb the Calcutta High Court's interpretation, thereby preserving its persuasive value in GST jurisprudence.

The decision assumes importance because it rejects the restrictive view that only suppliers can approach the AAR. The High Court recognised that exemption notifications directly impact recipients as well, especially in determining tax liability and compliance obligations. Taxpayers facing uncertainty regarding exemption applicability on inward supplies may therefore rely on this ruling to seek advance rulings and ensure greater tax certainty.

14. APPEAL UNDER GST

CASE LAW 56

DIAMOND BEVERAGES PVT. LTD.

VERSUS

COMMISSIONER OF CGST & CD (APPEAL-I), KOLKATA
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 21238 of 2022	Section 107 of the CGST/ WBGST Act, 2017.
Citation	
(2023) 2 Centax 11 (Cal.)	
Dated	
23.09.2022	

Where the appeal was filed and hearing was concluded, the Appellate Authority is required to pass a final order within a reasonable time.

PARA 03, PER MD. NIZAMUDDIN, J.

FACTUAL MATRIX

The Petitioner, Diamond Beverages Pvt. Ltd., filed a writ petition before the Hon'ble Calcutta High Court being aggrieved by the inaction of the Appellate Authority in not disposing of the statutory appeal filed under Section 107 of the CGST/WBGST Act, 2017.

The Petitioner submitted that the appeal in question had been filed on 27.03.2019 before the Appellate Authority. It was further submitted that the hearing of the said appeal had already been concluded on 18.01.2021.

Despite conclusion of hearing, no final order was passed by the Appellate Authority for a considerable period of time.

The Petitioner further submitted that representations dated 28.07.2021 and 03.03.2022 were also made before the Appellate Authority seeking disposal of the appeal, however, no order was passed.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court:

1. Took note of the grievance of the Petitioner regarding non-disposal of the statutory appeal despite completion of hearing.
2. The Court observed that the appeal had remained pending despite repeated representations made by the Petitioner before the Appellate Authority.

Accordingly, the Hon'ble Court disposed of the writ petition by directing the concerned Appellate Authority to pass a final order in the appeal in question within eight weeks from the date of communication of the order.

OUR COMMENTS

The present judgment reiterates the obligation of quasi-judicial authorities to dispose of statutory appeals within a reasonable period after conclusion of hearing. The Hon'ble Calcutta High Court recognized that undue delay in pronouncement of orders defeats the very purpose of appellate remedies and causes unnecessary hardship to taxpayers. The ruling reinforces the principle of timely adjudication and administrative accountability under GST.

CASE LAW 57

AD NORTH EAST AIR CARGO PVT. LTD.

VERSUS

THE JOINT COMMISSIONER, WEST BENGAL GST, LARGE TAXPAYER UNIT, CORPORATE DIVISION
High Court at Calcutta

Petition/Appeal No. MAT 2374 OF 2023	**Relevant Section/Rule** Section 50 of the CGST Act, 2017- Interest on delayed GST payments.
Citation (2024) 14 Centax 364 (Cal.)	
Dated 22.12.2023	

Adjudicatory Authority Cannot Ignore Retrospective Statutory Amendment Affecting Tax Liability

FACTUAL MATRIX

In the instant case, the assessee was served with a demand order, without the issuance of any show cause notice, wherein interest on gross tax liability was demanded against the assessee and the same was recovered on account of delay in filing Form GSTR-3B during November, 2017 to March, 2018 which was also upheld by the Appellate Authority without appreciating the fact that the amendment in Section 50 introduced vide Notification No. 63/2020-Central Tax dated 25.08.2020 providing applicability of interest on net cash liability is made applicable prospectively from 01.09.2020. The Authorities had also failed to consider the clarification provided by the CBIC vide press release dated

26.08.2020 stating that no recoveries of interest on gross tax liability shall be made prior to the above notification in line with the decision taken in 39th GST Council Meeting.

Being aggrieved with the above set of events, the assessee had approached the Hon'ble Calcutta High Court wherein the Hon'ble Single Bench dismissed the writ petition solely on the ground of delay, subsequent to which, the assessee preferred an Appeal before the Hon'ble Division Bench of the Hon'ble Calcutta High Court.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court admitted the Appeal with the following observations:

1. The principal legal issue raised by the Appellants in the writ petition as well as in the present appeal pertains to the scope, applicability, and legal effect of the retrospective amendment introduced to Section 50 of the CGST Act, 2017 through the Finance Act, 2021. A perusal of the order passed by the Appellate Authority reveals that the effect and implication of the aforesaid retrospective amendment had not been taken into consideration.

2. Considering the fact that a legal issue has been raised, the same can be gone into by the Appellate Authority and a fresh decision can be taken by the Appellate Authority.

3. Accordingly, the appeal as well as the writ petition are allowed and the order passed by the Appellate Authority is set aside and the matter is remanded back to the Appellate Authority to consider the appeal petition afresh after affording an opportunity of personal hearing to the Appellant wherein the Appellant shall furnish all materials.

OUR COMMENTS

The decision in the above-given judgment is a measured and

procedurally significant ruling that underscores an essential facet of tax adjudication that an authority cannot overlook a statutory amendment that is directly placed in issue before it, particularly when the amendment operates retrospectively.

The Division Bench did not venture into determining the assessee's ultimate liability under Section 50 of the Act nor did it attempt an expansive interpretation of the amended provision. The Court confined itself to a narrower but crucial question: whether the appellate authority had examined the effect of the retrospective amendment introduced through the Finance Act, 2021 while deciding the matter.

The Court found that such consideration was absent from the appellate order. In doing so, the judgment quietly highlights a fundamental adjudicatory principle that a decision affecting civil or fiscal liability must demonstrate consideration of all relevant legal developments governing the dispute so that the genuine taxpayers are not left prejudiced.

15. SECTION 129

CASE LAW 58

ASSISTANT COMMISSIONER, STATE TAX, DURGAPORE RANGE

VERSUS

ASHOK KUMAR SUREKA
Supreme Court of India

Petition/Appeal No. SLP Appeal (C) Nos. 21021-21022 of 2022	**Relevant Section/Rule** Transportation of Goods after expiry of E-Way Bill – Detention under section 129 of the CGST Act 2017.
Citation (2024) 21 Centax 528 (S.C.)	
Dated 13.08.2024	

Detention under Section 129 Cannot Be Sustained Merely Due to Expiry of One E-Way Bill When Another Valid E-Way Bill Exists and No Intent to Evade Tax Is Established

FACTUAL MATRIX

In the present case, the goods were being transported under cover of two e-way bills generated on the same date. The first e-way bill, having a validity period of three days, pertained to the movement of goods from the manufacturer's premises to the respondent's registered office situated at Kolkata. Since the ultimate place of delivery was located in a nearby area, a second e-way bill was generated on the very same day with a validity period of two days for the onward movement of goods.

Owing to an unforeseen mechanical breakdown of the vehicle, the transportation of goods was delayed. At the time of interception by the tax authorities, the first e-way bill remained valid and subsisting, whereas the second e-way bill had expired merely one day prior to such interception.

Notwithstanding the fact that there was no discrepancy whatsoever in the quantity, description, or nature of the goods being transported, the authorities proceeded to detain the goods along with the conveyance and imposed penalty under Section 129 of the CGST Act.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court, in the aforesaid order, did not adjudicate the matter on merits. The Special Leave Petitions were disposed of primarily on the ground that the disputed amount did not meet the monetary threshold prescribed.

In the said matter, the Hon'ble Division Bench of the Calcutta High Court had held that –

- the detention of the goods and conveyance under Section 129 of the Central Goods and Services Tax Act, 2017 was illegal, arbitrary, and unsustainable in law.
- At the time of interception, a valid e-way bill was admittedly in existence and, therefore, the tax authorities lacked jurisdiction to detain the goods or the conveyance merely on the ground that another subsequently generated e-way bill had expired.
- Further, there was no discrepancy whatsoever in the quantity, nature, or description of the goods transported, and that the assessee had furnished a bona fide and satisfactory explanation for the delay in transit.
- There was no deliberate attempt to evade the payment of tax by the assessee. Thus, relief granted by single bench in justified.

Since the Hon'ble Supreme Court disposed of the case without entering into the merits of the controversy, the relief granted by the Hon'ble High Court continued to remain operative, including the direction for refund of the penalty amount deposited under protest by the assessee.

OUR COMMENTS

The judgment reflects a purposive and pragmatic interpretation of Section 129 of the CGST Act by emphasizing that detention and penalty provisions should not be invoked in a purely mechanical manner. The Hon'ble Court rightly distinguished between a bona fide procedural lapse and an act involving intention to evade tax.

The ruling is significant as it protects genuine taxpayers from disproportionate penal consequences arising out of minor procedural irregularities, particularly where there is no dispute regarding the identity, quantity, or movement of goods. At the same time, the judgment reiterates that Section 129 is intended as a deterrent against deliberate tax evasion and not as a tool for penalizing every technical or clerical lapse during transit.

The decision therefore strengthens the principle that GST administration must operate in a fair, reasonable, and non-arbitrary manner, consistent with the broader objective of facilitating trade and commerce while safeguarding revenue interests.

CASE LAW 59

MEDHA SERVO DRIVES PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION (SOUTH BENGAL), DURGAPUR ZONE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT No. 1751 of 2022 with I.A. Nos. CAN 1-2 of 2022	SECTION 129 of the CGST ACT, 2017 / West Bengal GST Act, 2017
Citation (2023) 3 Centax 85 (Cal.)	
Dated 17.11.2022	

It is well settled that by merely using the expression "mens rea", it would not amount to concluding that there was a willful attempt on the part of the dealer to evade the payment of tax.

— PARA 04, PER T.S. SIVAGNANAM J.

FACTUAL MATRIX

The Petitioner transported bulky goods supplied to Chittaranjan Locomotive Works through three vehicles under multiple e-way bills. While one vehicle reached the destination, the remaining two were intercepted after expiry of the e-way bill validity period.

The goods were detained and tax and penalty under Section

129(1)(a) of the CGST Act, 2017 were imposed by the Adjudicating Authority. Aggrieved by the said order, the appellant had filed the appeal before the appellant authority.

The Petitioner at the stage of appeal contended that the delay occurred due to logistical reasons and there was no intention to evade tax. However, the Appellate Authority, despite passing a detailed order, failed to record any finding establishing mens rea. Aggrieved thereby, the Appellant preferred an intra-court appeal before the Hon'ble Division Bench after interim relief was declined by the learned Single Bench.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Division Bench categorically observed that merely using the expression "mens rea" in an order would not amount to arriving at a valid conclusion that there was a willful attempt to evade tax. The authority is required to specifically record reasons in writing demonstrating how and in what manner such intention to evade tax stood established.

The Hon'ble Court further observed that despite passing a lengthy 23-page order, the Appellate Authority had failed to discuss or establish the existence of mens rea. In absence of such a finding, the order could not be sustained in law.

Accordingly, the Hon'ble Division Bench set aside the orders passed by the Appellate Authority as well as the learned Single Bench and remanded the matter back to the Appellate Authority for fresh consideration. The Court directed the authority to provide an opportunity of personal hearing to the Appellant and thereafter pass a fresh reasoned order in accordance with law.

The Court also directed that, in place of the bank guarantee furnished towards tax and penalty, the Appellant may furnish a bond to the satisfaction of the concerned authority. No order as to costs was passed.

OUR COMMENTS

The aforesaid judgment is a significant pronouncement on the scope and application of Section 129 of the CGST Act, 2017. The Hon'ble Court has rightly emphasized that mere expiry of an e-way bill, by itself, cannot automatically justify detention of goods and imposition of tax and penalty.

The ruling reinforces the principle that the authorities must establish the existence of mens rea, namely a conscious and deliberate intention to evade payment of tax, before invoking penal consequences under Section 129.

The decision also reiterates the importance of adherence to principles of natural justice and passing of reasoned orders by quasi-judicial authorities. It serves as a reminder that the validity of an adjudication order lies not in its volume or length, but in the quality of its reasoning and proper application of mind.

CASE LAW 60

USHA MARTIN LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX, DURGAPUR
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 1034 of 2023 and I.A. Nos. CAN 1 & 2 2023	Section 129 of CGST Act'2017 read with rule 138 of CGST Rules'2017.
Citation (2023) 10 Centax 389 (Cal)	
Dated 16.06.2023	

Since goods were owned by appellants and same were taken back to their factory at Ranchi for repairs, no tax was payable

— PARA 12, PER TS SIVAGNANAM C.J. & UDAY KUMAR J.

FACTUAL MATRIX

The Petitioner, Usha Martin Ltd. filed an intra-court appeal before the High Court at Calcutta challenging the levy of 100% tax and penalty imposed under Section 129 of the GST Act.

The goods in question were originally meant for export. However, while loading the goods onto a vessel, the goods were damaged and therefore had to be transported back to the appellant's factory at Ranchi for repairs under the cover

of a challan and e-way bill. The e-way bill was valid till 12 September 2019.

During transit, the vehicle was intercepted on 13 September 2019 at about 8:20 AM, shortly after expiry of the permissible period for extension of the e-way bill under Rule 138(10) of the WBGST Rules. The authorities detained the goods and imposed tax and penalty on the ground that the e-way bill had expired.

The matter was subjected to adjudication before the Ld. Appellate authority where the demand for tax and penalty was confirmed. Aggrieved, the Petitioner filed a writ petition before the Single Bench of Hon'ble Calcutta High Court 2 years after the Appellate Authority's order was passed.

The Hon'ble Single Bench of Calcutta High Court dismissed the writ petition confirming the demand on the ground of delay in filing the petition.

Thereafter, the appellant preferred the present intra-court appeal seeking condonation of delay as well as relief on merits.

JUGDMENT/ORDER OF THE AUTHORITY

The Division Bench of the Hon'ble Calcutta High Court condoned the delay of 320 days in filing the appeal, considering the submissions made by the Petitioner that the delay had occurred due to non-constitution of the GST Tribunal and the fact that the tax amount and penalty had already been paid by the Petitioner.

After hearing the Counsel for Petitioners and respondents and considering the merits of the case the Hon'ble Division Bench of the Calcutta High Court held that as the goods taken back for repair were already owned by the Petitioner no tax was required to be paid.

Further, the Hon'ble High Court noted that the goods were being taken back under the cover of a challan & e-way bill

and that the goods were detained by the authorities shortly after the e-way bill had expired.

The Hon'ble High Court, relying on its own judgments in other cases such as Progressive Metals (P.) Ltd. v. Deputy Commissioner, State Tax, Bureau of Investigation, South Bengal, Durgapur Zone & Ors. in MAT562 of 2023 dated 28-4-2022 and in KDG Projects (P). Ltd. v. Assistant Commissioner of State Tax, Bureau of Investigation (North Bengal) reported in [2022] 144 taxmann.com 189/2022, held that in such cases the judgments were delivered on the basis of the bonafide conduct of the assessee and accordingly relief were granted.

The Hon'ble High Court considering the facts of the case held that there was no intent of tax evasion on the part of the Petitioner and Hence, no tax and penalty should have been levied.

Accordingly, the impugned orders passed by the Appellate Authority and Adjudicating Authority were set aside.

OUR COMMENTS

The present judgment constitutes important judicial pronouncement reaffirming the principle that penal provisions under Section 129 of the GST Act cannot be invoked mechanically in cases involving mere procedural or technical lapses.

The ruling clearly emphasizes that detention of goods and imposition of tax and penalty must be founded upon a demonstrable intention to evade tax. In the absence of any allegation of suppression, clandestine movement, or revenue loss, a mere lapse relating to expiry of the e-way bill cannot justify punitive action.

The judgment is also significant inasmuch as it reinforces the growing judicial approach of distinguishing bona fide transactions from cases involving actual tax evasion. The

Court rightly acknowledged that the goods were merely being transported back for repairs under valid documentation and that the transaction lacked any revenue implication.

Further, the Court's observations regarding delay assume considerable importance in the larger GST litigation landscape, particularly in view of the prolonged non-constitution of the GST Tribunal. The decision recognizes that taxpayers should not be prejudiced on account of absence of the statutory appellate forum contemplated under the GST framework.

CASE LAW 61

M/S VARDAN ASSOCIATES PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX CENTRAL SECTION
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 17452 of 2019	Section 129 of the CGST/ WBGST Act, 2017
Citation	
(2024) 17 Centax 235 (Cal.)	
Dated	
02.08.2022	

The assessee failed to show any specific provision of law exempting the goods from e-way bill requirements.

- PARA 03, PER MD. NIZAMUDDIN, J.

FACTUAL MATRIX

The Petitioner, M/s. Vardan Associates Pvt. Ltd., filed a writ petition before the Hon'ble Calcutta High Court challenging the impugned order dated 27.08.2019 passed under Section 129 of the WBGST Act, 2017 for the period 1st June 2019 to 30th June 2019.

The Petitioner challenged the appellate order whereby the adjudication order dated 27.06.2019 passed under Section 129 of the WBGST Act imposing penalty for violation of e-way bill provisions was upheld.

The goods were intercepted on 17.06.2019 during transportation and it was found that the e-way bill accompanying the goods had expired on 09.06.2019.

The Petitioner challenged the penalty proceedings contending that the goods being transported were exempt from e-way bill requirements.

However, the Petitioner failed to establish any specific statutory provision granting exemption from the requirement of carrying a valid e-way bill for the goods in question.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. The Hon'ble Calcutta High Court observed that the appellate authority had rightly upheld the penalty imposed under Section 129 of the WBGST Act for transportation of goods without a valid e-way bill.

2. The Court held that the Petitioner failed to demonstrate any provision of law exempting the goods from compliance with e-way bill requirements.

3. It was further observed that there was no procedural irregularity, violation of principles of natural justice, or illegality in the actions of the authorities warranting interference under Article 226 of the Constitution of India.

Accordingly, the Hon'ble Court dismissed the writ petition and upheld the penalty imposed by the authorities

OUR COMMENTS

The present judgment reiterates the strict compliance requirement relating to e-way bill provisions under the GST regime. The Hon'ble Calcutta High Court clarified that in the absence of a valid e-way bill or any specific statutory

exemption, penalty proceedings initiated under Section 129 of the GST Act cannot ordinarily be interfered with in writ jurisdiction.

The ruling further emphasizes that taxpayers challenging detention or penalty proceedings must clearly establish either procedural irregularity, violation of natural justice, or a specific legal exemption. Mere assertions without statutory backing would not be sufficient to invalidate the action of the authorities.

CASE LAW 62

M/S COMPUTER EXCHANGE (P.) LTD.

VERSUS

PR. COMMISSIONER OF CGST & CX, KOLKATA SOUTH COMMISSIONERATE

High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 1627 of 2022	Section 129 of the CGST/ WBGST Act, 2017
Citation	
(2022) 1 Centax 75 (Cal.)	
Dated	
30.09.2022	

Once a preliminary objection is raised on the question of jurisdiction, the adjudicating authority is required to deal with such issue first before deciding the matter on merits.

PARA 06, PER T.S. SIVAGNANAM AND SUPRATIM BHATTACHARYA, J.J.

FACTUAL MATRIX

The Petitioner, M/s. Computer Exchange (P.) Ltd., preferred an intra-court appeal before the Hon'ble Calcutta High Court challenging the order dated 23.09.2022 passed in W.P.A. No. 21202 of 2022 whereby interim relief was declined in respect of the Order-in-Original dated 27.07.2022 passed by the Principal Commissioner of CGST & CX, Kolkata South

The show cause notice invoked the extended period of limitation and proposed demand of service tax, interest, penalty and late fee for the financial years 2015-16 to 2017-18.

The Petitioner filed a reply to the show cause notice raising a preliminary objection regarding the validity of invocation of the extended period of limitation. It was contended that for the earlier period i.e. financial years 2011-12 to 2014-15, proceedings had already been initiated on the very same allegations and were pending before the Tribunal.

The Petitioner argued that once the department was already aware of the relevant facts during the earlier proceedings, suppression of facts could not again be alleged for the subsequent period for invoking the extended period of limitation.

The adjudicating authority, however, proceeded to decide the matter on merits and upheld invocation of the extended period of limitation without properly dealing with the preliminary objection raised by the Petitioner.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. Where a preliminary objection relating to jurisdiction or limitation is raised, the adjudicating authority is required to decide such issue s a preliminary issue before proceeding to examine the merits of the matter.

2. The Court held that the adjudicating authority had adopted an incorrect approach by deciding the merits first and thereafter dealing with the issue of limitation and jurisdiction.

3. The Court further observed that an important legal issue arose as to whether suppression of facts could again be alleged for subsequent periods when proceedings on identical allegations had already been initiated for earlier years.

4. It was held that such legal issue required consideration after filing of affidavit-in-opposition by the department

in the writ proceedings.

Accordingly, the Hon'ble Court directed that the adjudication order dated 27.07.2022 shall remain stayed till disposal of the writ petition and further directed the respondents to file their affidavit-in-opposition within the prescribed timeline.

OUR COMMENTS

The present judgment is an important reiteration of the principle that jurisdictional and limitation-related objections must be addressed at the threshold before adjudicating the matter on merits. The Hon'ble Calcutta High Court rightly observed that once the department is already aware of the relevant facts in earlier proceedings, invocation of the extended period of limitation for subsequent periods on identical allegations becomes a serious legal issue requiring careful examination.

The ruling also highlights the procedural impropriety committed by adjudicating authorities when preliminary objections are not independently dealt with before deciding the substantive issues. The decision strengthens safeguards against mechanical invocation of the extended period of limitation and reinforces the requirement of fair and reasoned adjudication in indirect tax proceedings.

CASE LAW 63

ISHAAN PLASTICS PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA 22612 OF 2023	Section 129 of the CGST Act, 2017 (Expiry of e-waybill at the time of interception of the vehicle)
Citation	
(2023) 11 Centax 264 (Cal.)	
Dated	
20.09.2023	

Proceedings under Section 129 of the CGST Act, 2017 cannot be sustained solely on account of a slight lapse in the validity period of the e-way bill, unless supported by evidence indicating fraudulent intent or an attempt to evade tax.

FACTUAL MATRIX

In the instant case, the assessee assailed the legality and propriety of the penalty proceedings initiated under Section 129 of the CGST Act, where the sole basis for detention and imposition of penalty was the continued transportation of goods beyond the validity period of the e-way bill. Notably, the e-way bill had expired at 11:59 p.m. on 27 December 2022, while the vehicle came to be intercepted at 8:37 a.m. on the following morning, thereby involving a negligible delay of scarcely nine hours. The alleged contravention was purely technical and procedural in character, bereft of any circumstance suggestive of tax evasion, fraudulent intent,

or mala fide conduct, and therefore incapable of attracting the rigours of penal action contemplated under Section 129.

Being aggrieved with such an event, the assessee filed a Writ Petition before the Hon'ble Calcutta High Court.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court made the following significant observations:

1. Placing substantial reliance upon the consistent judicial pronouncements of the Hon'ble Calcutta High Court, particularly in **Ashok Kumar Sureka v. Assistant Commissioner, State Tax, WPA No. 11085 of 2021 dated 01.03.2022** and in **Assistant Commissioner, State Tax v. Ashok Kumar Sureka, MAT 470 of 2022**, the Court unequivocally held that the assessee was entitled to refund of the penalty amount recovered in the instant matter. The Court reiterated the well-settled principle that the mere expiry of an e-way bill, in the absence of any cogent material indicative of an intention to evade tax, cannot ipso facto be elevated to conclusive proof of tax evasion so as to justify the invocation of penal consequences under Section 129 of the CGST Act, 2017.

2. The department failed to establish or demonstrate, either from the materials placed on record or from the surrounding circumstances of the case, the existence of any deliberate, conscious, or wilful intention on the part of the assessee to evade or avoid the legitimate levy of tax. No material could be brought forth to substantiate any allegation of fraudulent conduct, mala fide action, or any attempt at clandestine transportation of goods with a view to defeating the provisions of the GST law.

Consequently, the penalty proceedings were quashed, and the orders passed by the department against the assessee was set-aside.

OUR COMMENTS

The aforementioned judgment reinforces a growing judicial consensus that GST enforcement cannot become excessively technical or punitive in nature. The Court implicitly recognized the distinction between procedural lapse and intentional tax evasion. The ruling demonstrates that Section 129 is not intended to punish every procedural irregularity irrespective of context. It contributes significantly to the evolving jurisprudence that GST enforcement should target genuine evasion rather than punish technical lapses devoid of revenue impact.

One of the most striking aspects of the judgment is the Court's insistence on the absence of any "deliberate or wilful intention" to evade tax. Though GST is often treated as a strict liability framework, courts across India have increasingly emphasized that penalty provisions cannot operate entirely divorced from intent, especially where, tax invoices are genuine, movement of goods is documented and no discrepancy in quantity or valuation exists.

CASE LAW 64

KDG PROJECTS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION (NORTH BENGAL)
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 1478 of 2022	Section 107 of the CGST/ WBGST Act, 2017.
Citation	
2022 (66) G.S.T.L. 262(Cal.)	
Dated	
21.09.2022	

Before directing payment of tax and penalty for expiry of e-way bill, the authority is required to consider whether there was any intentional attempt to evade payment of tax.

PARAS 07 & 09, PER T.S. SIVAGNANAM, C.J. AND SUPRATIM BHATTACHARYA, J.

FACTUAL MATRIX

The Petitioner, KDG Projects Pvt. Ltd., preferred an intra-court appeal before the Division bench of Hon'ble Calcutta High Court challenging the order dated 25.07.2022 passed in W.P.A. No. 16044 of 2022 whereby the Learned Single Bench declined to grant interim protection.

The dispute arose from an order passed by the Assistant Commissioner of State Tax directing the Appellant to pay tax and equivalent penalty on the goods transported on the ground that the e-way bill had expired and more than 48 hours had elapsed.

The Petitioner contended before the authorities that the non-extension of the e-way bill was an unintentional mistake caused due to oversight by the accounts team.

The Petitioner also submitted that the vehicle had halted on 22.01.2021, followed by a local holiday on 23.01.2021 and Sunday on 24.01.2021, due to which the movement resumed on 25.01.2021 when the vehicle was intercepted by the authorities.

Despite the aforesaid facts, the appellate authority dismissed the appeal solely on the ground that the e-way bill had expired at the time of interception of the vehicle. The Single bench also declined to pass any interim order and directed affidavit-in-opposition to be filed by the respondent.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble division bench of High Court held that -

1. The appellate authority failed to examine whether there was any mala fide intention or deliberate attempt on the part of the Appellant to evade payment of tax.
2. The Court noted that the invoices had been duly raised and the entire tax amount had already been remitted by the Appellant in respect of the transaction.
3. It was further observed that confirmation of the demand would effectively result in double recovery of tax on the same transaction, which would be unjustified.
4. The Hon'ble Court held that the question regarding existence of mens rea or intention to evade tax was a relevant factor requiring proper consideration by the appellate authority.
5. Since such aspect had not been examined, the Hon'ble Court set aside the order dated 30.11.2021 passed by the appellate authority and remanded the matter for fresh consideration on merits in accordance with law.

6. The Court further directed the Appellant to obtain an affidavit from the transporter explaining the circumstances relating to delay in movement of the vehicle and granted liberty to the appellate authority to seek further details, if necessary.

OUR COMMENTS

The present judgment is a significant ruling on the issue of detention and penalty proceedings arising from expiry of e-way bills during transit. The Hon'ble Calcutta High Court clarified that mere expiry of an e-way bill cannot automatically justify imposition of tax and penalty without examining whether there existed any mala fide intention or deliberate attempt to evade payment of tax.

The decision emphasizes that authorities must consider surrounding circumstances, conduct of the taxpayer, payment of applicable taxes, and existence of genuine reasons for delay before invoking harsh penal consequences under GST law. The ruling reinforces the principle that procedural lapses, in the absence of mens rea or revenue loss, should not mechanically result in punitive action.

CASE LAW 65

AJAY SHAW

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION (SOUTH BENGAL), HOWRAH ZONE

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No.18137 of 2022	Section 129 of CGST/ WBGST Act, 2017
Citation	
2022(67) G.S.T.L. 171 (Cal.)	
Dated	
23.08.2022	

E-Way Bill being expired during transit due to break down of vehicle, demand and penalty was not imposable in absence of any intention to evade tax.

FACTUAL MATRIX

The Petitioner, Ajay Shaw, was transporting goods accompanied by a valid e-way bill which expired on 22 August 2021 at 11:59 p.m.; however, due to a breakdown of the vehicle during transit, the goods could not reach the destination within the validity period. The vehicle was intercepted by the tax authorities on 23 August 2021 at around 9:30 p.m., approximately 21 hours after expiry of the e-way bill, following which the goods and vehicle were detained and tax and penalty were imposed under Section 129 of the CGST/WBGST Act on the ground of movement

of goods with an expired e-way bill.

Aggrieved by the said order, the Petitioner preferred an appeal before the Learned Appellate Authority, which however confirmed the order of the Adjudicating Authority. The Petitioner thereupon approached the Hon'ble High Court of Calcutta by way of a writ petition, challenging the impugned orders.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court while placing reliance upon the judgment rendered in **Ashok Kumar Sureka v. Assistant Commissioner,** elucidated that:

1. Detention of goods and imposition of penalty under Section 129 of the CGST Act is not justified in cases where the transaction is bona fide and no intention to evade tax is discernible from the records.

2. The Hon'ble Court held that mere expiry of the e-way bill during transit, particularly when supported by a genuine explanation such as vehicle breakdown, cannot ipso facto justify imposition of tax and penalty under Section 129 of the CGST/WBGST Act.

3. In view of the aforesaid findings, the Hon'ble Court set aside the orders passed by the adjudicating authority as well as the appellate authority and directed consequential refund of tax and penalty to the petitioner.

OUR COMMENTS

This decision reinforces the principle that procedural lapses under GST, such as expiry of an e-way bill during transit, should not automatically attract penal consequences unless accompanied by clear intent to evade tax. The Court has rightly emphasized the requirement of mens rea, ensuring that genuine business hardships, like vehicle breakdown, are not penalised disproportionately.

The ruling also provides practical relief to the consignor or consignee of the goods by clarifying that minor delays beyond validity periods, especially when reasonably explained, do not justify detention or penalty under Section 129. It aligns enforcement with fairness and prevents arbitrary application of GST provisions, promoting ease of doing business.

CASE LAW 66

ASSISTANT COMMISSIONER OF REVENUE

VERSUS

USHA GUPTA
Supreme Court of India

Petition/Appeal No. 4533-4534 of 2023	**Relevant Section/Rule** Circular No 207/1/2024-GST & Section 129 of CGST Act'2017.
Citation (2025) 36 Centax 278 (S.C.)	
Dated 24.09.2025	

The impugned order would not fall in any of the specific categories mentioned in Clause (iv) of Paragraph 4 of the Circular as the direction relates to re-computation of penalty in respect of a specific transaction and does not directly involve refund or interpretation of any provision of the Act/Rules/Notification. Moreover, the issue is not of a recurring nature.

PARA 5, PER MANOJ MISRA, J. AND VIPUL M. PANCHOLI, J.

FACTUAL MATRIX

The respondent-assessee, **Usha Gupta**, was transporting goods to Bhutan for export. Two of her consignments were detained by the Bureau of Investigation, North Bengal, on three grounds: (i) the quantity of boxes was found to be lesser than that shown in the transport documents; (ii) IGST had not been charged; and (iii) there was an alleged discrepancy between the export invoice and the purchase order. The appellate authority subsequently imposed a **200% penalty**

on the entire consignment under Section 129 of the CGST/ WBGST Act, 2017.

Being aggrieved there by the assessee approached the single bench of Calcutta High court challenging the penalty order and seeking an interim stay. The Single Bench, vide order dated **1st March 2023**, declined to grant any interim relief. Aggrieved by this refusal, the assessee preferred an intra-court appeal along with the underlying writ petition before the Division Bench of the Calcutta High Court comprising T.S. Sivagnanam and Hiranmay Bhattacharyya, JJ wherein the division bench disposed of both the matters holding as follows.

(i) IGST issue: The appellate authority had already granted relief to the assessee on the ground of non-charging of IGST, so this was not in dispute before the Bench.

(ii) Document discrepancy: The purchase order from the Bhutan buyer correctly reflected the sales order number as SG/2022-23/004. In the export invoice, the buyer's licence number had been shown in the field for buyer's order number. The Court held this was not a genuine discrepancy warranting a 200% penalty on the entire consignment.

(iii)Shortage of quantity: Since the assessee had herself expressed willingness to pay the penalty for the shortage at the time of detention, the penalty was to be recalculated only on the shortage quantity. The order of the appellate authority imposing penalty on the entire consignment was set aside, the matter was remanded for recalculation, and refund of excess penalty was directed within eight weeks.

Later being aggrieved the revenue challenged the division bench order before the Supreme court. The respondent-assessee thereupon filed an application placing on record CBIC Circular No. 207/1/2024-GST dated 26.06.2024, which directs the Department of Revenue not to file or pursue

appeals in the Supreme Court where the monetary limit involved is less than ₹ 2 crores. The penalty in dispute was approximately ₹ 13 lakhs — far below the prescribed threshold. Revenue contended that the case might fall within the excluded categories under Paragraph 4(iv) of the Circular.

JUGDMENT/ORDER OF THE AUTHORITY

The **Supreme Court comprising Manoj Misra and Vipul M. Pancholi, JJ.**, declined to entertain the revenue's appeal. After perusing the High Court's order, the Court found that the case did not fall under any of the excluded categories mentioned in Clause (iv) of Paragraph 4 of the Circular ,namely matters involving valuation, classification, refunds, place of supply, or recurring issues requiring statutory interpretation.

The Court held that the direction to recompute the penalty related to a **specific transaction only** and did not involve refund or interpretation of any provision of the Act, Rules, or Notifications. The issue was also not of a recurring nature. Accordingly, the appeals were disposed of in terms of the Board Circular, thereby **affirming the Division Bench's order in favour of the assessee.**

OUR COMMENTS

This judgment reiterates that CBIC monetary limit circulars are binding on the Department and exceptions thereto must be construed strictly. A transaction-specific penalty dispute involving recomputation cannot be treated as a recurring interpretational issue merely to bypass the monetary threshold for filing appeals.

The ruling is significant in curbing unnecessary departmental litigation in low-value matters where no substantial question of law is involved.

CASE LAW 67

TRUTH UDYOG METAL AND STEEL PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No. M.A.T. No. 2311 of 2024 and I.A. No. CAN 1 of 2024	**Relevant Section/Rule** Section 129 of CGST Act, 2017 Rule 138 of CGST Rules, 2017
Citation (2025) 29 Centax 400 (Cal.)	
Dated 21.01.2025	

We need not labour much to examine as to whether the reasoning given by the learned Single Bench was justified or not as on facts, we are convinced that there cannot be any intention or much less a wilful intention on the part of the appellants to evade payment of tax.

PARA 4, PERT.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The Appellant, Truth Udyog Metal and Steel PVT Ltd., by vehicle was intercepted by the Revenue authorities at 6:00 PM on June 15, 2023, while it was en route to a weighbridge for the purposes of weighment

At the time of interception, the E-way bill had not yet been generated. After the completion of the weighment process, the E-way bill was generated at 6:56 PM on the same date —

a gap of approximately 56 minutes from the time of interception.

The adjudicating authority imposed a penalty on the Appellant under Section 129(1)(a) of the CGST Act, 2017 / West Bengal GST Act, 2017, on the ground that the goods were being transported without a valid E-way bill. The appellate authority affirmed the penalty and dismissed the appeal.

The Appellant remitted the penalty amount of Rs. 1,75,716/- without prejudice to its rights and contentions and thereafter challenged the orders of both the adjudicating and appellate authorities before the Hon'ble High Court at Calcutta by way of a writ petition.

JUGDMENT/ORDER OF THE AUTHORITY

The division bench of Hon'ble High Court at Calcutta, held that

- On the peculiar facts and circumstances of the present case, no intention — much less a wilful intention — to evade payment of tax could be attributed to the Appellant.
- Even assuming that there was a delay in the generation of the E-way bill, such delay, in the context of the facts of this case, cannot be construed as delay occasioned by a wilful intention to evade payment of tax. Thus, does not warranted the imposition of penalty under Section 129(1)(a) of the GST Act. Accordingly, both the order of the adjudicating authority dated July 05, 2023, and the order of the appellate authority dated October 5, 2024, were set aside.
- The Appellant was granted liberty to apply for a refund of the penalty amount of Rs. 1,75,716/- already remitted.

OUR COMMENTS

This decision of the Calcutta High Court is a significant ruling on E-way bill compliances under the GST regime in

the context of Section 129(1)(a) of the GST Act relating to detention and penalty during transportation of goods. The Hon'ble Court distinguished a mere technical lapse from a deliberate attempt to evade tax and reiterated that penal provisions must be construed strictly. It was held that the existence of mens rea or a wilful intention to evade tax is a prerequisite for invoking Section 129(1)(a), and therefore, mere non-availability of an E-way bill at the time of interception, in the absence of any intention to evade tax, cannot justify imposition of penalty.In light of this ruling, taxpayers engaged in the transportation of heavy or bulk goods requiring statutory weighment should maintain documentary evidence of their visit to the weighbridge (such as weigh-bridge receipts with timestamps) to substantiate the genuineness of any delay in E-way bill generation. This would be an effective safeguard against unwarranted penal action under Section 129 of the GST Act.

CASE LAW 68

TRUTH UDYOG METAL AND STEEL PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 2311 of 2024 and I.A. No. Can 1 of 2024	Section 129(1)(a) of the CGST Act, 2017 relating to detention, seizure and penalty on goods in transit for alleged contravention of GST provisions.
Citation (2025) 29 Centax 400 (Cal.)	
Dated 21.01.2025	

Even assuming that there is a delay, the delay cannot be construed to be one with awillful intention to evade payment of tax.

— PARA 04.T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The petitioner, **Truth Udyog Metal and Steel Pvt. Ltd.**, was transporting goods and the vehicle was intercepted by the GST authorities while proceeding towards a weigh-bridge for weighment. The E-way Bill was generated shortly after completion of the weighment process, resulting in a marginal delay. Treating the delay as a contravention of the GST provisions, the department imposed penalty under Section 129(1)(a) of the CGST/WBGST Act, which was subsequently affirmed by the appellate authority. Aggrieved by the same, the petitioner challenged the orders before the Calcutta High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Calcutta High Court held that mere delay in generation of the E-way Bill cannot by itself establish intention to evade tax under Section 129(1)(a) of the GST Act. The Court observed that the vehicle was genuinely proceeding towards the weigh-bridge for weighment purposes. The Court noted that the E-way Bill was generated immediately after completion of the weighment process and, therefore, no mala fide intention could be attributed to the petitioner. Consequently, the essential requirement for invoking Section 129(1)(a) was absent. Accordingly, the Court concluded that the penalty imposed by the adjudicating authority and affirmed by the appellate authority was unsustainable in law. Consequently, both the impugned orders were quashed and set aside. The writ petition as well as the intra-court appeal were allowed in favour of the petitioner. The Court also granted liberty to the petitioner to apply for refund of the penalty amount already deposited, to be processed in accordance with law.

OUR COMMENTS

This ruling reinforces the well-settled principle that Section 129(1)(a) cannot be invoked mechanically for every procedural lapse — a willful intention to evade tax remains the sine qua non for sustaining penalty. The Calcutta High Court's pragmatic approach in recognizing weighment-related delays as a legitimate commercial necessity is particularly significant for industries dealing in weight-based commodities like steel, cement, and coal.

CASE LAW 69

USHA GUPTA

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE BUREAU OF INVESTIGATION, NORTH BENGAL
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 477 of 2023 with I.A. No. 1 of 2023	Section 129 deal with the Detention, Seizure and Release of Goods and Conveyances in Transit.
Citation (2023) 9 Centax 370 (Cal.)	
Dated 30.03.2023	

The order passed by the appellate authority for levying penalty on the entire consignment and the matter is remanded back to the appellate authority to recalculate to take note of the order and recalculate the penalty in respect of shortage in quantity and over than quantity penalty shall be levied at 200% and the remaining penalty which has been remitted by the appellant shall be refunded to the appellant within a period of eight weeks from the date of receipt of the server copy of the order.

— PARA 4, T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

The Appellant, Usha Gupta, was transporting two consignments of goods intended for export to Bhutan, which were intercepted and detained by the Revenue Authorities on three grounds. First, the physical number of boxes found

during inspection was less than the quantity declared in the accompanying documents. Second, IGST had not been charged on the invoices raised in respect of the consignments. Third, there was a mismatch between the details mentioned in the export invoices and the corresponding purchase orders.

Consequently, the Respondent Authorities issued a show cause notice and proceeded to impose a penalty equivalent to 200% of the value of the entire consignment.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition held that:

The first ground of detention was that physical quantity of boxes were less than the quantity shown in documents. Notably, the Appellant expressed her willingness to pay the penalty for the shortage at the time of detention. Despite this concession, the authority imposed 200% penalty not merely on shortage of goods, but on the entire consignment which includes the amount of Cess paid by the Appellant.

The second ground of detention was that IGST was not charged on the export invoices. The court noted that the appellate authority had already granted relief to the appellant on this ground.

The third ground was the most substantively examined by the Court. The Appellant produced the sale order bearing number SG/2022-23/004 dated 23rd April, 2022, and the purchase order placed by the buyer correctly reflected the said sale order number along with the buyer's License Number as SAB84282. However, in the export invoices, the buyer's License Number was inadvertently entered in the field designated for the buyer's order number. The Court rightly held that such a purely clerical error, causing no revenue loss, could not justify the imposition of a 200% penalty on the entire consignment.

The court held that the penalty under provision of Section

129 of GST Act could only applied to the shortage quantity, but not on the entire consignment. Imposing the 200% penalty on the full consignment which also include cess paid by the appellant was found to be excessive and incorrect.

Thus, the impugned proceedings in the case were set aside, directing the appellate authority to recalculate the penalty in respect of shortage of goods and remaining penalty shall be refunded to Appellant within a period of eight weeks from the date of receipt of the order.

OUR COMMENTS

The decision in Usha Gupta firmly establishes that penalty under Section 129 must be proportionate — confined to the actual shortage or discrepancy, and not punitively extended to the entire consignment.

The Division Bench rightly held that inadvertent clerical errors, such as a buyer's licence number entered in the order-number column, cannot trigger 200% penalty where the underlying sales and purchase orders match correctly.

The judgment now stands affirmed by the Hon'ble Supreme Court in (2025) 36 Centax 278 (S.C.), preserving its full operative force and lending strong precedential weight to the proportionality principle under Section 129

16. SECTION 168A

CASE LAW 70

INDUS TOWERS LTD.

VERSUS

UNION OF INDIA
High Court of Gauhati

Petition/Appeal No. W.P. (C) No. 529 of 2024	**Relevant Section/Rule** Extension of Dates u/s 168A and Section 73 of the CGST Act, 2017 read with Section 16 of the CGST Act, 2017.
Citation (2024) 16 Centax 6 (Gau.)	
Dated 12.02.2024	

Till the returnable date, the proceedings initiated pursuant to the impugned Show Cause notice may proceed, but no final order in respect of the impugned Show Cause Notice shall be passed

— PARA 09, PER MANISH CHOUDHURY J.

FACTUAL MATRIX

The Petitioner, Indus Towers Ltd., was issued a Demand-cum-Show Cause Notice under Section 73 of the CGST Act, 2017 for FY 2018-19 alleging wrongful availment of Input Tax Credit (ITC) from suppliers who had not filed GSTR-3B returns, along with certain demands under Section 16(4), plus interest, and penalty.

The Show Cause Notice was issued on the basis of Notification No. 09/2023-Central Tax dated 31.03.2023, through which the CBIC extended the time limit for passing orders under Section 73 up to 31.03.2024 by invoking powers under Section 168A of the CGST Act.

Aggrieved by the said extension, the Petitioners challenged before the Hon'ble Gauhati High Court:

(i) Notification No. 09/2023-Central Tax dated 31st March, 2023, issued under Section 168A of the CGST Act, 2017, which extended the time limit under Section 73(10) for issuance of demand orders relating to Financial Year 2018-19 up to 31st March, 2024.

(ii) The Demand-cum-Show Cause Notice issued to the Petitioner on the basis of the said notification, demanding tax under Section 73(1) of the CGST Act, 2017, along with interest, and penalty.

The Petitioner contended that by the year 2023, the COVID-19 pandemic had substantially ceased and therefore could not be treated as a valid "force majeure" event for extending limitation under Section 168A of the CGST Act.

Reliance was also placed on interim orders passed by various High Courts, including the Hon'ble Allahabad High Court and Hon'ble Gujarat High Court, where similar demand notices issued on the basis of the said notification were under challenge and the Hon'ble High Courts there provided an interim relief to the Petitioners.

The Petitioner further referred to the suo motu order of the Hon'ble Supreme Court extending the period of limitation only up to 28.02.2022.

JUGDMENT/ORDER OF THE AUTHORITY

While admitting the writ petition the Hon'ble Gauhati High Court made the following observations:

- The Hon'ble High Court read the explanations to Section 168A of the CGST Act that the term "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the

provisions of the Act.

- The Hon'ble High Court also observed the limitation period under Section 73(10) had already been extended once prior to issuance of Notification No. 09/2023-CT and that the orders passed by the other High Courts such as the Hon'ble Allahabad High Court, Hon'ble Gujarat High Court, etc. were still in operation till date.

Considering the above aspects, the Hon'ble High Court directed the Petitioner to file its reply to the Show Cause Notice and permitted the department to continue adjudication proceedings. However, the Court specifically restrained the department from passing any final order till the returnable date thereby providing an interim relief to the Petitioner.

OUR COMMENTS

The interim order assumes considerable significance as it further strengthens the growing nationwide judicial scrutiny surrounding Notification No. 09/2023-Central Tax and reinforces the emerging judicial view that the invocation of COVID-19 as a force majeure event under Section 168A in March 2023 warrants a detailed constitutional examination. The consistent grant of interim protection by various High Courts across the country reflects judicial concern over the potential arbitrariness in extending statutory limitation periods through notification issued long after the pandemic-related disruptions had substantially ceased.

The order also provides significant relief to taxpayers facing proceedings under the impugned notification, as it allows the authorities to continue adjudication proceedings but restrains them from passing any final adverse orders until the validity of the notification is finally decided by the Court.

CASE LAW 71

ANMOL STAINLESS PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX, SERAMPORE CHARGE

High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 2103 of 2025	Section 73 read with Section 168A
Citation	
(2025) 30 Centax 336 (Cal.)	
Dated	
05.05.2024	

Taking into consideration the fact that a prima facie case has been made out by the petitioner

— PARA 6, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The GST authorities had issued a show cause-cum-demand notice under Section 73 of the CGST ACT/WBGST ACT, 2017 for the tax period April 2019 to March 2020. The said notice, issued on 30 April 2024, was based upon Notification No. 9/2023-C.T. dated 31.03.2023 and Notification No. 56/2023-C.T. dated 28.12.2023, whereby the limitation period prescribed under Section 73(9) was extended by invoking powers under Section 168A of the Act. The Petitioner challenged the validity of such notifications contending that Section 168A permits extension of limitation only in cases involving "force majeure" circumstances, whereas no such

extraordinary situation existed during the relevant period. It was further contended that the show cause notice and the consequential adjudication order were issued beyond the statutory limitation period and therefore constituted a colourable exercise of power.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. The petitioner had raised a substantial jurisdictional issue regarding the validity of extending the limitation period under Section 168A of the CGST/WBGST Act. The Court noted that such extension could be granted only in cases of "force majeure," and prima facie found substance in the Petitioner's contention.

2. The Court further held that the dispute could not be decided immediately without detailed examination of facts and legal provisions. Therefore, it directed the State GST authorities to file an affidavit-in-opposition and granted the petitioner liberty to file a reply, so that the matter could be adjudicated comprehensively.

3. Considering that the petitioner had established a prima facie case and relying upon the earlier decision in OSL Exclusive (P.) Ltd. v. Union of India, the Court granted interim relief by staying the impugned demand and adjudication order till December 2025 or until further orders, whichever was earlier.

OUR COMMENTS

The judgment delivered by the Calcutta High Court is significant as it emphasizes that the power to extend limitation under Section 168A of the CGST/WBGST Act, 2017 cannot be exercised mechanically. The Court recognised that such extensions are intended only for extraordinary situations involving "force majeure" and cannot be routinely invoked by the authorities. By granting relief to the

petitioner, the Court protected taxpayers from uncertainty arising out of reopening of old tax periods after expiry of the normal limitation period. The decision reinforces the importance of fairness, legal certainty while exercising powers under the GST framework.

CASE LAW 72

INDUS TOWER LTD.

VERSUS

STATE OF JHARKHAND
High Court at Ranchi

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 2874 of 2024	Section 73 read with Section 168A
Citation	
(2024) 20 Centax 443 (Cal.)	
Dated	
16.05.2024	

In the meantime, there shall be ad interim stay of the operation of the order dated 29th April 2024. Petitioner-Firm shall be at liberty to implead the appropriate authority of the Central Government.

— PARA 8, PER SHREE CHANDRASHEKHAR, ACTG. C.J. AND NAVNEET KUMAR, J.

FACTUAL MATRIX

The Petitioner, Indus Towers Limited, filed a writ petition before the High Court of Jharkhand challenging Notification No. 56/2023-Central Tax dated 28.12.2023 and the adjudication order issued in Form GST DRC-07 under Section 73 of the CGST/JGST Act, 2017 for FY 2018–19. The Petitioner contended that the notification extending the limitation period was contrary to Section 168A of the CGST Act and had been issued on lines similar to Notification No. 09/2023-Central Tax, the operation of which had already been stayed by various High Courts.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. The petitioner's challenged against Notification No. 56/2023-Central Tax and the adjudication order issued in Form GST DRC-07 under Section 73 of the CGST/JGST Act for FY 2018–19. The Court also found that the issues raised required detailed consideration and therefore issued notice to the respondents.

2. The Court took note of the Petitioner's contention that Notification No. 56/2023-Central Tax had been issued on lines similar to Notification No. 09/2023-Central Tax, the operation of which had already been stayed by several High Courts.

3. Pending final adjudication of the writ petition, the Court granted an ad interim stay on the operation of the adjudication order dated 29.04.2024 passed against the Petitioner under Section 73 of the CGST/JGST Act.

4. The Court further permitted the Petitioner to implead the appropriate authority of the Central Government as a party respondent and directed that the matter be tagged along with W.P.(T) No. 958 of 2024 for analogous hearing, thereby keeping open the larger issue concerning the validity of Notification No. 56/2023-Central Tax issued under Section 168A of the CGST Act.

OUR COMMENTS

The judgment is significant as the Court, at the interim stage, refrained from expressing any conclusive opinion on the merits of the dispute but recognised that the challenge to Notification No. 56/2023-Central Tax and the extension of limitation under Section 168A of the CGST Act required detailed examination, particularly when similar notifications had already been stayed by other High Courts.

The Court also balanced the interests of both parties by not quashing the adjudication order at this stage and merely staying its operation pending further adjudication.

17. VIOLATION OF NATURAL JUSTICE

CASE LAW 73

EDEN REAL ESTATES PVT. LTD.

VERSUS

THE SENIOR JOINT COMMISSIONER OF REVENUE
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 1205 of 2024	Principles of Natural Justice -Revenue obligated to consider Pre-Notice Reply before proceeding further
Citation	
(2024) 15 Centax 364 (Cal.)	
Dated	
07.02.2024	

GST authority concerned to reconsider the case of the petitioner by taking into consideration the aforesaid detailed reply dated 26th December, 2023 before proceeding any further.

— PARA 04, PER MD NIZAMUDDIN J.

FACTUAL MATRIX

A Show-Cause Notice in Form DRC-01 was issued by the WBGST Authority without considering the earlier detailed reply submitted by the Petitioner.

Hence, the impugned SCN was challenged on the grounds that the same was non-speaking, thereby violating the principles of natural justice, and had been issued without considering the detailed reply filed by the Petitioner against the pre-show cause notice (intimation).

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition and after hearing the parties and perusing the record, disposed of the writ petition by setting aside the impugned show-cause notice in Form GST DRC-01.

The matter was remanded back to the GST authority concerned with a direction to reconsider the case of the Petitioner, taking into consideration the detailed reply dated 26th December, 2023 filed against the pre-show cause notice, before proceeding any further.

The Court further directed that while reconsidering the reply, the Petitioner shall be given an opportunity of personal hearing. The ruling was accordingly in favour of the assessee.

OUR COMMENTS

This is a highly significant ruling that reinforces the mandatory nature of the pre-show cause notice mechanism under the GST law. The judgment makes clear that the issuance of a pre-show cause notice (DRC-01A) is not a mere procedural formality and the revenue authority is legally obliged to consider and discuss the taxpayer's reply before issuing a formal show-cause notice. A failure to do so renders the show-cause notice non-speaking and violative of natural justice, making it liable to be set aside.

This decision has far-reaching implications for taxpayers across the country. In practice, revenue authorities often issue formal show-cause notices immediately after the pre-notice stage without genuinely engaging with the taxpayer's submissions. This ruling provides a strong legal basis to challenge such notices before the appropriate forums.

Taxpayers must ensure that their replies to pre-show cause notices are detailed, well-documented, and filed in a timely manner on the GST portal. It is equally important to

maintain evidence of submission of the reply, as the Court's intervention in this case was facilitated by the clear record of the reply being filed before the show-cause notice was issued.

CASE LAW 74

M/S TORRENT MINERALS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER, STATE TAX
High Court of Calcutta

Petition/Appeal No. W.P.A. No. 18033 of 2025	**Relevant Section/Rule** Section 73 read with Section 75(4) of the CGST/ WBGST Act, 2017.
Citation (2025) 35 Centax 290 (Cal.)	
Dated 10.09.2025	

The Proper Officer is obliged to afford an opportunity of hearing when an adverse order is contemplated.

— PARA 07, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, M/s. Torrent Minerals Pvt. Ltd., filed a writ petition before the Hon'ble Calcutta High Court challenging the adjudication order dated 03.07.2024 passed under Section 73 of the CGST Act, 2017 for the period April 2019 to March 2020.

The Petitioner contended that the issue regarding availment of ITC had earlier been examined by the Bureau of Investigation in proceedings under Section 67 of the Act, wherein the explanation furnished by the Petitioner regarding incorrect classification of IGST and cess credit had already been accepted. It was submitted that despite the

earlier enquiry being concluded, a fresh show cause notice dated 13.05.2024 was issued by the department.

The department contended that repeated opportunities had been granted to the Petitioner through issuance of pre-show cause notice in Form DRC-01A, show cause notice in Form DRC-01 and subsequent notices, however, the Petitioner failed to respond to the same.

Despite non-response by the Petitioner, the adjudication order was passed without granting any opportunity of personal hearing as contemplated under Section 75(4) of the Act.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. Although the Petitioner had failed to respond to the notices issued by the department, the Proper Officer was nevertheless statutorily obliged to provide an opportunity of personal hearing before passing an adverse order.

2. The Court further noted that the Bureau of Investigation had earlier examined the issue relating to availment of ITC and had accepted the explanation furnished by the Petitioner, though such aspect could not be considered by the Proper Officer due to non-response to the notices.

3. Taking an overall view of the matter and in the interest of justice, the Court set aside the adjudication order dated 03.07.2024 and remanded the matter back to the Proper Officer for fresh adjudication.

4. The Court directed the Petitioner to deposit a sum of Rs. 20 lakhs within four weeks as a condition for grant of relief.

The Hon'ble Court disposed of the writ petition by directing the Proper Officer to grant fresh opportunity to respond to the show cause notice, provide personal hearing and thereafter adjudicate the matter in accordance with law.

OUR COMMENTS

The present judgment is a significant reiteration of the mandatory requirement of personal hearing under Section 75(4) of the CGST/WBGST Act before passing any adverse adjudication order. The Hon'ble Calcutta High Court clarified that even where the taxpayer has failed to respond to notices, the statutory obligation to provide an opportunity of hearing cannot be dispensed with.At the same time, the judgment also emphasizes that taxpayers must diligently respond to departmental notices and proceedings, as failure to do so may invite conditional reliefs and adverse observations from the Court. The ruling strikes a balance between safeguarding principles of natural justice and ensuring procedural discipline in GST adjudication proceedings.

CASE LAW 75

BASANTA KUMAR SHAW

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE, COMMERCIAL TAX & STATE TAX, TAMLUKCHARGE
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 11592 of 2024	Principles of natural justice
Citation	
(2024) 19 Centax 56 (Cal)	
Dated	
14.05.2024	

The very object and purpose of granting a personal hearing under the provisions of the CGST/WBGST Act is to enable the assessee to effectively explain, clarify, and substantiate the response furnished against the allegations made in the Show Cause Notice. As rightly observed by the Hon'ble Calcutta High Court in the matter of Basanta Kumar Shaw vs Assistant Commissioner of Revenue, "The very object of personal hearing is to elucidate on the response to be given by the petitioner."

— PARA 2, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner was issued a Show Cause Notice under Section 73 of the CGST/WBGST Act, 2017 for the Financial Year 2017–18, whereby time was granted to furnish reply till 02.04.2023. However, the Respondent Authority, in utter disregard of the statutory scheme and settled principles of

natural justice, fixed the personal hearing on 20.02.2023, i.e., much prior to the expiry of the period granted for filing reply. Thereafter, no effective or meaningful opportunity of hearing was afforded to the Petitioner, and the Proper Officer proceeded to pass the impugned adjudication order dated 04.08.2023 adverse to the interests of the Petitioner.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

1. The tax authority failed to provide the Petitioner with a fair opportunity of being heard.

2. The Court observed that fixing a personal hearing before the expiry of the reply period, without granting any effective hearing, thereafter, resulted in a violation of Section 75(4) of the CGST/WBGST Act, 2017 and the principles of natural justice.

3. The impugned order dated 04.08.2023 was set aside, and the matter was remanded to the proper officer with directions to provide a proper hearing, consider relevant documents, and dispose of the proceeding under Section 73(1) of the said Act within four weeks from the date of communication of this order.

Thus, it further clarified that it had not examined the merits of the case and that the proper officer is free to adjudicate the matter independently.

OUR COMMENTS

From the above judgment of Calcutta High Court, it is evident that the Department is required to follow the principles of natural justice while conducting adjudication proceedings. The authority must provide a fair, proper, and effective opportunity of personal hearing before passing any adverse order. Mere issuance of hearing notice as a

procedural formality cannot be considered sufficient compliance with Section 75(4) of the CGST/WBGST Act, 2017. Further, fixing a hearing before expiry of the reply period defeats the very purpose of personal hearing and renders the proceedings procedurally defective. Accordingly, any order passed without granting adequate opportunity of hearing is liable to be set aside in the eyes of law.

CASE LAW 76

M/S CONSTRUCTIVE BUILDERS PVT. LTD.

VERSUS

JOINT COMMISSIONER OF REVENUE (APPEALS)
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 16173 of 2025	Section 73 read with Section 107 of the CGST/ WBGST Act, 2017 deals with adjudication of tax demands and filing of appeals before the Appellate Authority.
Citation	
(2026) 38 Centax 329 (Cal.)	
Dated	
14.01.2026	

" The Appellate Authority cannot reject an appeal by passing a non-speaking one-line order merely stating delay in submission of appeal without assigning proper reasons."

— PARA 4, PER OM NARAYAN RAI, J.

FACTUAL MATRIX

The Petitioner *Constructive Builders Pvt Ltd.* challenged an order dated 15.01.2025 passed by the Appellate Authority under Section 107 of the CGST Act whereby the appeal filed against an adjudication order passed under Section 73 of the Act was dismissed solely on the ground of delay.

The petitioner contended that the appeal could not be filed within the prescribed limitation period since the key personnel responsible for handling GST matters and managing the GST portal was on medical leave due to serious health issues, as a result of which the adjudication order

could not be promptly communicated to the management.

It was further submitted that an application for condonation of delay had been filed before the Appellate Authority explaining the circumstances leading to the delay. However, the Appellate Authority rejected the appeal by passing a one-line non-speaking order merely stating "delay in submission of appeal" without assigning any reasons or considering the grounds urged in the condonation application. Aggrieved by such mechanical rejection, the petitioner approached the Hon'ble Calcutta High Court by way of writ petition.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court observed that the Appellate Authority had failed to provide any proper reason while rejecting the appeal and had merely passed a one-line non-speaking order referring to delay in filing of appeal.

The Court held that the Appellate Authority should have properly examined the application for condonation of delay and passed a reasoned order. The Court further observed that although the grounds cited by the petitioner for condonation of delay were not fully satisfactory, the appeal could not have been rejected without adequate reasoning.

Accordingly, the Court granted conditional relief and directed that if the petitioner deposits Rs.10,000/-with the High Court Legal Services Committee within two weeks and furnishes proof thereof before the Appellate Authority, the delay in filing the appeal shall stand condoned and the appeal shall thereafter be heard on merits. Consequently, the impugned appellate order dated 15.01.2025 would stand set aside.

OUR COMMENTS

This judgment reinforces the principle that appellate authorities under GST law are duty bound to pass proper reasoned and speaking orders while dealing with appeals

on limitation issues and cannot reject appeals mechanically through one-line observations.

The ruling further underscores that procedural justice cannot be sacrificed at the altar of technicalities. While acknowledging that the explanation for delay may not have been entirely satisfactory, the Court nevertheless ensured that the valuable statutory right of appeal was not defeated mechanically. By reviving the appellate remedy subject to reasonable conditions, the Court struck a balanced approach between procedural discipline and substantive justice.

CASE LAW 77

DUAKEM PHARMA PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
WPA No. 18295 of 2024	Section 73

Citation
(2025) 29 Centax 387 (Cal.)

Dated
29.04.2024

"The date of receipt of certified copy of this order whichever is later, shall stand excluded while computing the period of limitation for initiation of any proceeding against the petitioners."

— PARA 6, PER RAJA BASU CHOWDHURY.

FACTUAL MATRIX

The petitioner, received goods from two suppliers and treated them as exempt, not charging GST on outward supplies. The department issued a show cause notice only for reversal of certain ITC linked to exempt supplies. However, in its final order, the department went beyond this notice and demanded tax on the outward supplies, treating the goods as taxable at 12% and 5%. The petitioner challenged the order and argued that these new tax demands were never mentioned in the original notice.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court ruled that the department's final order against the petitioner was invalid to the extent it imposed new tax liabilities that were not included in the show cause notice. The show cause notice only mentioned reversal of certain Input Tax Credit (ITC) that were linked to the exempt supplies, but in the final order, the department not only demanded reversal of ITC but also imposed tax on the outward supplies, holding that goods received from Narmada Gelatines Ltd. and Alivira Animal Health Ltd. were not exempt and should have been taxed at 12%. Further, tax at 5% was demanded on certain other supplies (HSN 2306) based on E-waybill data. As a result, the Court set aside these additional tax demands and clarified that the department is free to issue a fresh show cause notice and start new proceedings on these same issues as per law. The Court further directed that the period between the date of the original order (29 April 2024) and the date of disposal of this writ petition (10 April 2025), or the date when the certified copy of this order is received (whichever is later), shall be excluded while computing limitation for starting any new proceedings.

OUR COMMENTS

This judgment strongly reinforces the principle of natural justice, which requires that a taxpayer must be clearly informed in advance about any tax demands or allegations through a show cause notice. The High Court rightly held that the department cannot go beyond the scope of the show cause notice as it denies the taxpayer a fair opportunity to respond.

CASE LAW 78

M/S EASTLAND SWITCHGEARS PVT. LTD.

VERSUS

THE ASSISTANT COMMISSIONER OF REVENUE, COLUO TOLA & EZRA STREET CHARGE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 110 of 2025 and I.A. No. Can 1 of 2025	Section 73 read with Section 65 of the CGST Act, 2017 / WBGST Act, 2017
Citation (2025) 28 Centax 6 (Cal.)	
Dated 11.02.2025	

It will be incumbent upon the adjudicating authority, while issuing show-cause notice to record reasons for its finding.

— PARA 9.

FACTUAL MATRIX

The department issued a discrepancy memo listing 12 issues for which the appellant submitted its reply, and 11 issues were accepted by the department, leaving only one issue relating to a mismatch between GSTR-1 and GSTR-9. A final audit report was then issued for which the appellant submitted a further reply. However, the department issued a show-cause notice without clearly explaining why the reply was unsatisfactory. While a single judge advised to respond to the notice and take part in adjudication. Hence the appellant filed an intra-court appeal seeking relief against

the vague show-cause notice.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that the show-cause notice issued had lacked sufficient reasoning because it did not explain why the assessee's detailed reply to the final audit report was considered unsatisfactory. A show-cause notice must contain a prima facie view of the department clearly stating why tax is still considered payable, so that the taxpayer gets a proper chance to defend itself. By not providing this reasoning, the department violated the principle of natural justice, especially the right to be heard (Audi alteram partem).Therefore, the show-cause notice dated 19.11.2024 was quashed to that extent, and the matter was remanded to the department to issue a fresh show-cause notice clearly stating why the reply was not satisfactory. The department was also directed to give the assessee reasonable time to respond, and thereafter adjudicate the matter as per law.

OUR COMMENTS

This case reinforces the need for clear and reasoned show-cause notices (SCNs) in tax adjudication. This judgement clearly states that a show-cause notice under GST law must not only mention discrepancies but also set out detailed reasons why the taxpayer's explanations are not acceptable, thereby upholding the fundamental principle of audi alteram partem (the right to be heard) where the assessee must be given proper opportunity to be heard to ensure fairness and transparency in tax administration.

CASE LAW 79

M/S FLEMINGO DUTYFREE SHOP PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF REVENUE, SALT LAKE CHARGE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
M.A.T. No. 1739 of 2024 and I.A. No. Can 1 of 2024	Section 73 of the CGST Act, 2017 / WBGST Act, 2017 – Ex parte adjudication order – Restoration of proceedings to stage of show cause notice
Citation (2024) 23 Centax 216 (Cal.)	
Dated 10.09.2024	

In order to maintain a consistent approach in the matter, this Court is of the view that one more opportunity can be granted to the appellants to go before the authority and establish their case

— PARAS 7, PER T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYAJ, J.

FACTUAL MATRIX

The case concerns an ex-parte demand order dated 28.08.2024, issued by the Respondent under Section 73 of the CGST/WBGST Act, 2017 for the assessment year 2018-19. The appellant challenged the order, arguing that it was passed without considering the merits of the case and highlighting that a similar issue for the assessment year 2017-18 had been dropped by the Respondent.

The Single Bench dismissed the writ petition, reasoning that

the petitioners had failed to respond to both the pre-show-cause notice and the show-cause notice and did not provide a valid explanation for their non-compliance. Aggrieved, the appellant filed an appeal before the Division Bench of the Calcutta High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The Hon'ble High Court observed that although the Assessee had failed to participate in the adjudication proceedings, the facts revealed that for the earlier assessment year involving identical issues, the Department had already dropped the proceedings and such position had attained finality.

2. Relying upon the principle of consistency, the Court held that the Assessee should be granted one more opportunity to establish its case before the adjudicating authority.

3. Accordingly, the ex parte adjudication order as well as the order passed by the learned Single Bench were set aside and the matter was restored to the stage of show cause notice.

4. The Court directed the Assessee to submit its reply along with supporting documents within the prescribed time and further directed the adjudicating authority to grant opportunity of personal hearing and pass a fresh order on merits in accordance with law.

OUR COMMENTS

This judgment reflects a balanced approach taken by the Hon'ble High Court in upholding procedural fairness and ensuring consistency in tax adjudication.

This judgment also recognises that the tax authority should maintain uniformity in decision-making and should not

arbitrarily change their stance in the different assessment years when similar facts have been covered during the previous year. The case also highlights the importance of consistency in tax administration. Since the department had dropped proceedings for the earlier assessment year on identical facts, the Court rightly observed that a contradictory stand in a later year without justification could lead to arbitrariness and unfairness.

CASE LAW 80

M/S REAN WATERTECH PVT. LTD.

VERSUS

THE STATE OF MADHYA PRADESH
High Court of Madhya Pradesh at Jabalpur

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 16184 of 2024	Sections 73 read with Section 75(4) of the CGST Act, 2017 / MPGST Act, 2017 – Mandatory personal hearing – Violation of principles of natural justice
Citation	
(2024) 24 Centax 76 (M.P.)	
Dated	
06.09.2024	

Opportunity of hearing is required to be given, even in those cases where no such request is made but adverse decision is contemplated against such person.

— PARAS 10, PER SUSHRUT ARVIND DHARMADHIKARI, J. AND SMT. ANURADHA SHUKLA, J.

FACTUAL MATRIX

The petitioner, Rean Watertech Pvt. Ltd., challenged an adjudication order passed in Form GST DRC-07 by the State Tax Department, whereby a substantial GST demand, along with interest and penalty, was raised for alleged excess availment of Input Tax Credit (ITC) and short payment of output GST under Sections 73/74 of the CGST/MPGST Act. The petitioner contended that the demand was confirmed without properly considering its reply to the show cause notice and, more importantly, without granting an opportunity of personal hearing. Aggrieved by the alleged violation of principles of natural justice under Section 75(4),

the petitioner approached the High Court seeking quashing of the order.

JUGDMENT/ORDER OF THE AUTHORITY

The petitioner contended that the order violated Section 75(4) of the Act, which mandates an opportunity for a hearing when an adverse decision is contemplated, even if not specifically requested. The Court, while interpreting Section 75(4), emphasized that "the language employed in sub-section 4 of Section 75 of the Act leaves no room for any doubt that the word 'or' is used by the lawmakers for a specific purpose. Although, in the first portion of the statute, the statute talks about a specific request, the portion after the word 'or' makes it clear like a cloudless sky that an opportunity of hearing is required to be given, even in those cases where no such request is made but an adverse decision is contemplated against such person." Rejecting the Revenue's argument that personal hearings are optional, the Court ruled that "opportunity of hearing" includes a personal hearing. Consequently, the impugned order was set aside.

OUR COMMENTS

The case highlights the significance of natural justice in GST adjudication. The Madhya Pradesh High Court set aside the adjudication order, which imposed a tax demand and penalty under Section 73 of the CGST/MPGST Act, 2017, without granting the petitioner a personal hearing. This judgment reaffirms the mandatory nature of a personal hearing in GST adjudication, even if not explicitly requested. By setting aside the flawed order, the Court upholds the principles of natural justice, ensuring fair treatment and due process for taxpayers.

CASE LAW 81

M/S SARAOGI E-VENTURE PVT. LTD.

VERSUS

THE ASSISTANT COMMISSIONER, CENTRAL GOODS AND SERVICES TAX & CENTRAL EXCISE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 10560 of 2023	Section 107 of the Central Goods and Services Tax Act, 2017 and Principles of Natural Justice
Citation	
(2023) 9 Centax 336 (Cal.)	
Dated	
08.06.2023	

If an appeal has got merit it should not be dismissed on such hyper-technical ground of non-filing of certified copy within the statutory period when the appeal itself was filed within the time along with copy of the order online.

— PARA 3, MD NIZAMUDDIN, J.

FACTUAL MATRIX

The Petitioner, Saraogi E-Ventures Pvt Ltd filed an appeal online before the Appellate Authority within the statutory period along with a copy of impugned order. However, the petitioner didn't separately submit a certified copy of impugned order within 7 days of the online submission of the appeal. The Appellate Authority dismissed the appeal solely on the technical ground without examining the merit of the case. Aggrieved by the dismissal of the appeal, the Petitioner filed the Writ Petition.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court, while admitting the petition, elucidated that:

Section 107 of the CGST Act, 2017 governs appeal to the Appellate Authority. It provides that any person aggrieved by any decision or order passed by the Adjudicating Authority may appeal to the Appellate Authority with in 3 months from the date of communication of such decision. The CGST Rules further require that the Appellant must submit a certified copy of the impugned order within seven days of the online submission of the appeal.

The Petitioner duly filed an appeal online before the Appellate Authority within the statutory period as prescribed under the Act along with a copy of impugned order. However, the Petitioner did not separately submit a certified copy of the impugned order within seven days of the online submission of the appeal, as required by the procedural rules under the CGST framework.

The Appellate Authority dismissed the appeal purely on the hyper-technical procedural ground of non-filing of the certified copy of the order within seven days of online submission without examining the merits of the case.

The court held that it is an undisputed fact that the appeal was filed online within the prescribed statutory period, along with the copy of the order. Where an appeal has merit, it should not be dismissed on a mere technical ground such as the non-filing of a certified copy within the stipulated time, especially when the appeal itself was filed within time along with the order copy online.

Thus, the impugned order passed by Appellate Authority was set aside. The matter was remanded back to the concerned authority. The Authority was directed to decide the remanded appeal within 3 months from the date of the High Court's

order after observing the principle of Natural Justice.

OUR COMMENTS

An appeal filed online within the statutory period under Section 107 of CGST Act, 2017, accompanied by a copy of the order. The authority cannot dismissed appeal on the hyper-technical ground that a "certified copy" was not separately filed within 7 days. Procedural technicalities should not override the substantive right of appeal, especially when the appeal has merit.

The Appellate Authority must observe the principles of natural justice while deciding the appeal. Particularly the doctrine of audi alteram partem i.e., the right to be heard should be given to assessee while passing the adverse order.

CASE LAW 82

SHREE RAMDOOT METLOYS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX DIRECTORATE OF COMMERCIAL TAXES

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 31048 of 2024	Section 54 of the CGST Act, 2017; Rule 96 of the CGST Rules, 2017 (read with Rule 96(4)(c) and Rule 96(5A)); Article 226 of the Constitution of India
Citation	
(2025) 29 Centax 89 (Cal.)	
Dated	
19.02.2025	

In this case, since the petitioners had no reasons to regularly access the refund module, as the petitioners were awaiting refund in their bank account, the petitioners claim to have missed the communication issued by the respondents not only as regards system generated claim application in FormGSTRFD-01 but also the subsequent show cause.

— PARA 10. RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The petitioner, a manufacturer and exporter of ferro alloys, effected zero-rated supplies on payment of IGST under shipping bills dated 18 April 2023 and 5 June 2023, in compliance with Section 16 of the IGST Act, 2017. Under the scheme of Rule 96 of the CGST Rules, 2017, the shipping bills, on furnishing of a valid GSTR-3B and on receipt of the export manifest, are deemed to constitute an application for

refund of IGST, with the refund being credited automatically to the registered bank account.

The automatic refund, however, was withheld by the Department under Rule 96(4)(c). Consequent to such withholding, a system-generated refund application in Form GST RFD-01 was raised on the common portal in terms of Rule 96(5A), followed by a Show Cause Notice on the said portal. The petitioner, awaiting credit of refund into its bank account in the ordinary course, did not have occasion to access the refund module of the portal and consequently failed to notice the system-generated application as well as the Show Cause Notice.

For want of response, the proper officer rejected the refund claim vide Order in Form GST RFD-06 dated 25 September 2024. Aggrieved, the petitioner invoked the writ jurisdiction of the Hon'ble Calcutta High Court under Article 226, contending that the order was passed in breach of the principles of natural justice, the petitioner having had no effective opportunity of being heard.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court, on a conspectus of the scheme of Rule 96 and the practical architecture of the common portal, held that although Rule 96(5A) prescribes the portal as the mode of intimation, the system-generated refund application is, in fact, accessible only through the refund module. Where an exporter is awaiting an automatic credit in its bank account in the ordinary course, it cannot be expected to routinely traverse the refund module of the portal. In such peculiar facts, the Court was of the view that the benefit of doubt deserves to be extended to the petitioner.

Holding that the petitioner had been denied an effective opportunity of hearing, the Court set aside the refund rejection order dated 25 September 2024 on the ground of violation of the principles of natural justice. The petitioner

was permitted to file its reply to the Show Cause Notice within two weeks, and the proper officer was directed to dispose of the refund application within four weeks from the receipt of such reply. The writ petition was disposed of in the said terms.

OUR COMMENTS

The order firmly touches around following stakes of the law

1. **Maintainability and entertainability of the writ petition**

   The Hon'ble High Court rightly entertained the writ petition despite the availability of an appellate remedy under Section 107, reiterating that alternative remedy is not an absolute bar where principles of natural justice are violated. Upholding the principles laid down by Supreme court in ***Godrej Sara Lee Ltd. Versus Excise and Taxation Officer – Cum - Assessing Authority Godrej Sara Lee Ltd. vs. Excise and Taxation Officer – Cum - Assessing Authority (2023) 3 Centax 49 (S.C.).***

2. **Primacy of natural justice — even where the statute has been technically complied with**

   The judgment reinforces that mere technical compliance with the statutory mode of communication is not sufficient if the notice does not effectively reach the assessee. Reaffirming the principles of natural justice . The Court held that procedural fairness must be real and effective, and not merely a formal compliance on paper.

CASE LAW 83

M/S ANURAG GADODIA

VERSUS

The ASSISTANT COMMISSIONER OF STATE TAX
High Court of Calcutta

Petition/Appeal No. W.P. No. 3788 of 2024 **Citation** (2024) 16 Centax 88 (Cal) 2024 (83) G.S.T.L. 354 (Cal.) **Dated** 28.02.2024	**Relevant Section/Rule** Principles of natural justice-Order passed by Adjudicating Authority without considering the extension letter.

Although, the discretion to grant an adjournment vests in the authority, in my view such discretion must be exercised judiciously.

— PARA 09, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, M/s. Anurag Garodia, filed a writ petition before the Hon'ble High Court at Calcutta challenging an order dated 20th December, 2023, passed under Section 73(9) of the West Bengal GST Act, 2017 read with the CGST Act, 2017.

A show-cause notice under Section 73(1) had been issued to the Petitioner on 22nd September, 2023, requiring a response by 25th October, 2023, with a personal hearing date fixed on 10th October, 2023.

The Petitioner submitted that on account of Durga Puja, it

was unable to prepare its response adequately, and further, the office of the revenue authorities remained closed between 16th October, 2023 and 29th October, 2023. Immediately upon reopening on 30th October, 2023, the Petitioner applied in writing for an extension of time.

This was followed by a formal response/extension application on the GST portal dated 6th November, 2023, wherein the Petitioner also sought a personal hearing.

Additionally, the Petitioner highlighted that it had closed down its business and surrendered its GSTIN in the year 2020, making it difficult to compile and furnish a response within the short timeframe.

Despite the extension application being pending, the revenue authority passed a final order on 20th December, 2023 without formally rejecting or considering the extension request.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition held that:

1. Once the Petitioner had applied for an extension, the revenue authority was legally obliged to consider such application before proceeding to pass a final order.

2. The Court noted that the final order was passed on 20th December, 2023 which was more than a month after the extension was sought and yet the authority did not formally reject the application.

3. The Court observed that while the discretion to grant or refuse adjournments vests in the authority under Section 75(5) of the GST Act, such discretion must be exercised judiciously. The manner in which the authority proceeded to pass a final order by bypassing the extension application and denying a personal hearing was held to be a colourable exercise of power.

4. The Court further rejected the respondents' argument

that the Petitioner had an alternative remedy by way of appeal, ruling that an appeal is no substitute for revisiting an ex parte order where the defence of the petitioner has not been placed on record, and that violation of natural justice principles is a valid ground for exercise of extraordinary writ jurisdiction.

Accordingly, the impugned order was set aside and the Petitioner was directed to file its response till date provided by the Hon'ble High Court, and the revenue authority was directed to provide the petitioner with a new date of personal hearing thereafter.

OUR COMMENTS

This is a significant judgment that reaffirms the primacy of natural justice in GST adjudication proceedings. The ruling makes it clear that a revenue authority cannot pass a final order merely by ignoring or bypassing a pending extension application filed by a taxpayer.

The Court's observation that discretion under Section 75(5) must be exercised judiciously is an important reminder that statutory powers cannot be exercised in a mechanical or arbitrary manner.

Taxpayers who face similar situations where extension applications or requests for personal hearing are filed but ignored can draw considerable strength from this ruling. The judgment also settles an important procedural point: the pendency of an appellate remedy does not bar writ jurisdiction where the order is ex parte and vitiates on grounds of natural justice, since the defence of the assessee has not been considered at all.

Practitioners and taxpayers should ensure that all extension applications are filed promptly in writing as well as on the GST portal, and should maintain proper records of the same to rely upon in the event of such proceedings.

CASE LAW 84

SOFTROSE PETROCHEMICALS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX, POSTA BAZAR AND BURTOLA CHARGE
High Court of Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 9498 of 2024	Section 73

Citation
(2024) 20 Centax 183 (Cal.)

Dated
07.05.2024

The matter requires to be remanded back to the proper officer for re-adjudication.

— PARA 9, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

During FY 2018–19, the Petitioner imported goods from ONGC Petro Additions Limited, an SEZ unit, and duly paid IGST on such imports while availing corresponding input tax credit. However, the GST Department issued an order under Section 73 of the CGST/WBGST Act, 2017 demanding CGST and WBGST without considering the payment of IGST. The Petitioner contended that transactions involving SEZ units are liable to IGST and not CGST/SGST and further submitted that the Department failed to consider its reply uploaded on the GST portal and the relevant Ministry of Finance Press Release. Aggrieved by the impugned order,

the Petitioner approached the Calcutta High Court challenging its validity.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court held that:

1. The Court observed that the petitioner had already paid IGST on the goods imported from the SEZ unit and had also disclosed this fact before the department through its reply uploaded on the GST portal.

2. It was held that the proper officer failed to adequately consider the petitioner's submissions and the relevant Press Release issued by the Ministry of Finance prior to passing the order under Section 73.

3. The Court further held that material facts and relevant documents had not been properly examined by the adjudicating authority. Accordingly, the impugned order dated 15 March 2024 was set aside.

4. The matter was remanded to the proper officer for fresh adjudication with a direction to grant the Petitioner an effective opportunity of personal hearing in terms of Section 75(4) of the CGST/WBGST Act and thereafter pass a reasoned order within a period of six weeks, without expressing any opinion on the merits of the case.

OUR COMMENTS

The judgment also reiterates the importance of adherence to the principles of natural justice under GST law, particularly the obligation of the adjudicating authority to provide a meaningful opportunity of hearing and to pass a reasoned and speaking order under Section 75(4). By remanding the matter for reconsideration, the Court emphasized that tax authorities are required to follow a fair, transparent, and legally sustainable adjudication process before fastening any tax liability upon the taxpayer.

CASE LAW 85

USHA GUPTA

VERSUS

THE ASSISTANT COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. W.P.A. No.17530 of 2022	**Relevant Section/Rule** Principles of natural justice Non-consideration of reply and no opportunity of personal hearing given
Citation (2022) 1 Centax 239 (Cal.)	
Dated 10.08.2022	

I am inclined to dispose of this writ petition being WPA 17530 of 2022 by setting aside the impugned order of the appellate authority dated 28th July, 2022 and remanding the matter back to the appellate authority concerned to pass a fresh speaking order in accordance with law on merit of the said appeal without insisting on the issue of limitation, within a period of eight weeks from the date of communication of this order without granting any unnecessary adjournment to the petitioner.

— PARA 4, MD. NIZAMUDDIN, J.

FACTUAL MATRIX

The Petitioner, Usha Gupta filed as appeal against the Appellate Authority on ground of that the appeal was filed beyond the limitation period without considering the merit of appeal and an order of adjudication was passed on 18th March,2020 against the Petitioner. The Petitioner had no knowledge of the order until her bank account was debited on 28th July,2022

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

Section 75(4) of the CGST Act, 2017 mandates that the proper officer is obliged to grant an opportunity of being heard to the taxpayer. This is not a discretionary power but a statutory duty that the proper officer is bound to discharge in every appropriate case.

The opportunity of being heard is obligatory in following two situations- first, Where the taxpayer makes a written request of such an opportunity **or** second, where the proper officer contemplates passing any decision adverse to the interest of the taxpayer.

A one-line order does not qualify as a speaking order. A proper officer is required to issue a speaking order that clearly sets out the relevant facts and the specific grounds on which the decision is based. This ensures transparency in the decision-making process and enables the taxpayer to understand the precise reasons for the order, which is essential for pursuing any future appeals.

The Respondent Authority failed to provide the Petitioner with an opportunity for a personal hearing, which is a mandatory requirement under Section 75(4) of the CGST Act, 2017. This omission constitutes a violation of the principles of natural justice and the established decision-making process.

Consequently, the impugned proceedings were set aside by the Court. The concerned Authority has been directed to issue a fresh speaking order on the merits of the matter. Additionally, the Petitioner has been directed to file an appropriate application seeking a refund of any amount deposited in excess of the prescribed pre-deposit.

OUR COMMENTS

The adjudicating authority completely fails to comply with Section 75(4). This was the direct contravention of "Audi Alteram Partem" principle- the most basic rule of natural justice that no person shall be condemned without being heard. It is a mandatory statutory obligation on every tax officer and the absence of hearing renders any adverse order legally unsustainable.

A one-line order that did not state any reasons was invalid. It specifically noted that dismissing an appeal on grounds of late filing without addressing the merits of appeal. It was a violation of the statutory provision of Section 75(6) of the relevant GST Act.

18. MISCELLANEOUS

CASE LAW 86

M/S BIDYUT AUTOTECH PVT. LTD.

VERSUS

THE ASSISTANT COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No. 12637 of 2025	Section 16, Section 44, Section 47, Section 73, Section 74 and Section 107 of the CGST/WBGST Act, 2017 read with Article 265 of the Constitution of India
Citation	
(2026) 38 Centax 25 (Cal.)	
Dated	
26.11.2025	

In terms of Article 265 of the Constitution of India no tax can be levied or collected except by authority of law.

— PARA 11, PER OM NARAYAN RAI, J.

FACTUAL MATRIX

The Petitioner was engaged in the business of trading motor vehicles during the financial year 2017-18 and had purchased vehicles on payment of GST along with Cess from its suppliers. The Cess paid on inward supplies was duly reflected in Form GSTR-2A in terms of Section 38 of the CGST Act, 2017.

The Petitioner also collected Cess on outward supplies made to customers. However, while filing returns in Form GSTR-3B, the Petitioner failed to disclose the outward Cess liability on the bona fide belief that sufficient accumulated Cess ITC was available for adjustment against such liability.

Subsequently, during finalization of accounts, the Petitioner realized the mistake and disclosed the omitted outward Cess liability in the annual return filed in Form GSTR-9 under Section 44 of the CGST Act, 2017 on 28.08.2023.

Thereafter, a Show Cause Notice was issued under Section 74 of the CGST Act, 2017 alleging non-payment of Cess amounting to Rs. 44,71,625/-. Since no reply was furnished by the Petitioner, an adjudication order came to be passed raising tax, interest and penalty demand aggregating to Rs. 1,28,26,999/-.

Therefore, aggrieved by order the Petitioner filed an appeal under Section 107 of the CGST Act, 2017 to Appellate Authority. The Appellate Authority held that there was no fraud, wilful misstatement or suppression of fact and therefore converted the proceedings from Section 74 to Section 73. However, it failed to consider GSTR-9 and the claim of unutilized ITC of Cess available on inward supplies.

Accordingly, the Petitioner filed the writ petition before the Calcutta High Court.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court while admitting the writ petition held as under:

Article 265 of the Constitution of India mandates that no tax can be levied or collected by authority of law. Therefore, if the GST Authorities burden the Petitioner with outward CESS liability without granting the adjustment of available ITC of Cess on inward supplies, the same would offend the spirit of Article 265 of the Constitution of India.

The Authorities committed an error by completely ignoring the disclosures made by the Petitioner in Form GSTR-9 and the claim regarding available Cess ITC.

Prior to the amendment brought into Section 44(2) of CGST

Act, 2017 with effect from 01-10-2023 there was no such statutory prohibition on filing delayed Annual Return in Form GSTR-9. Since the Petitioner had filed GSTR-9 on 28-08-2023 that is prior to the amendment comes into effect. Therefore, Annual Return cannot be ignored merely on the grounds of delayed filing.

The Appellate Authority itself have accepted that there was no suppression of fact or wilful misstatement or fraud committed by the Petitioner and accordingly converted the proceedings under Section 74 of CGST Act, 2017 to proceedings under Section 73 of CGST Act, 2017.

The Hon'ble High Court directed the Appellate Authority to reconsider the matter taking the effect into the account of disclosures made by the Petitioner in Form GSTR-9 and the differential liability after adjusting the available Cess ITC.

Accordingly, the impugned appellate order dated 06-02-2025 was set aside and the matter was remanded back to the Appellate Authority for fresh adjudication in accordance with law.

OUR COMMENTS

The decision in Bidyut Autotech Pvt. Ltd. reaffirms the constitutional rule under Article 265 — that the State cannot demand outward CESS while ignoring the petitioner's unavailed CESS ITC on inward supplies, where the net effect is revenue-neutral.

Equally significant is the Court's holding that the three-year bar inserted in Section 44(2) by the Finance Act, 2023 is prospective in operation. Annual returns filed prior to 01-10-2023, though beyond the original due date, continue to enjoy full statutory recognition — supported by the late-fee mechanism under Section 47, which itself contemplates, rather than prohibits, delayed filing.

CASE LAW 87

CHAMONG TEE EXPORTS PVT. LTD.

VERSUS

DEPUTY COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. WPA No. 11520 of 2024	**Relevant Section/Rule** **Section 128A read with Section 73 of the CGST/ WBGST Act, 2017 –** relates to waiver of interest and penalty for demands not involving fraud where the taxpayer pays the entire tax amount.
Citation (2025) 28 Centax 194 (Cal.) / 2025 (98) G.S.T.L. 347 (Cal.)	
Dated 27-02-2025	

GST demand challenged under Section 73 can be withdrawn to avail waiver benefit under newly inserted Section 128A.

— PARA 4, PER RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, Chamong Tea Exports Pvt. Ltd., challenged the GST demand order issued under Section 73 of the CGST/ WBGST Act through Form GST DRC-07 dated 23.03.2024 before the High Court at Calcutta.

During the pendency of the writ petition, the West Bengal Goods and Services Tax (Amendment) Act, 2024 introduced Section 128A, which granted waiver of interest and penalty for the period from 01.07.2017 to 31.03.2020 in cases covered under Section 73, provided the taxpayer paid the entire tax amount.

The Petitioner submitted before the Court that the entire tax amount had already been paid and sought permission to withdraw the writ petition in order to avail the benefit of waiver under Section 128A.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court noted that Section 128A was newly introduced under the GST law.

The provision granted waiver of interest and penalty in eligible cases.

The Court recorded the submission of the Petitioner that the entire tax amount had already been paid.

The Petitioner therefore sought permission to withdraw the writ petition to avail the waiver benefit.

The Court allowed the Petitioner to withdraw the writ petition without examining the issue of tax payment.

Accordingly, the petition was dismissed as withdrawn for availing benefit under Section 128A.

The interim relief granted earlier by the Court was also vacated.

The matter was disposed of in favour of the Petitioner.

OUR COMMENTS

This is a procedurally brief order, but it offers a useful illustration of how taxpayers can pivot from active litigation to the Section 128A amnesty framework introduced through the Finance (No. 2) Act, 2024. The Court permitted withdrawal of the writ petition to enable the assessee to avail waiver of interest and penalty, without adjudicating on the merits of the underlying Section 73 demand.

CASE LAW 88

M/S AMAR KUMAR SAHA

VERSUS

THE JOINT COMMISSIONER, CGST AND CX COMMISSIONERATE, HOWRAH

High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
MAT No. 1961 of 2022 and I.A. Nos. CAN 1 of 2022 & CAN 2 of 2024	Sections 65(25b), 73, 77 and 78 of the Finance Act, 1994 read with Section 174 of the CGST/WBGST Act, 2017
Citation (2025) 34 Centax 411(Cal.)	
Dated 25.03.2025	

"This amount has to be necessarily refunded to the appellant by re-credited to the cash/credit ledger of the appellant."

— PARA 16, PER T.S. SIVAGNANAM, C.J. & CHAITALI CHATTERJEE(DAS) J.

FACTUAL MATRIX

The appellant executed several infrastructure projects under work orders issued in September 2016, prior to the implementation of GST on 01.07.2017.

However, due to administrative delays, a post-facto approval was granted on 6th June 2017, and actual payments were made after the GST regime commenced. Despite the pre-GST nature of the contract, the appellant was subjected to Service tax demand by the Service Tax Department (under

adjudication order dated 29.09.2022) and the State authorities made GST recovery on payments made post-GST.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court observed and held as under:

1. The Court held that the post-facto sanction was valid and binding and cannot now be disputed by the department to evade tax reimbursements.

2. The Hon'ble High Court clarified that taxing the same consideration under both service tax and GST is impermissible, and GST wrongfully collected due to administrative confusion must be refunded to the contractor's ledger.

3. The Court directed the PWD department to pay to the petitioner the service tax demanded and asked the petitioner to remit the same to the Service Tax Department under the CGST Head.

Accordingly, Order passed by the state authorities were set aside and a direction was given to the State authorities to recredit to the appellant's credit/cash ledger a sum of Rs. 65.28 lakhs within a period of four months from the date of receipt of a server copy of this order and the PWD department was directed to pay to the petitioner the service tax demanded, namely, Rs. 84,84.035/- and upon receipt of the said amount the appellant is directed to remit the said amount to the Service Tax Department under the CGST Head within three days from the date of receipt of the amount from the Public Works Department.

OUR COMMENTS

This judgment is an important ruling concerning transitional tax disputes arising during the shift from the Service Tax regime to GST.

The Hon'ble Calcutta High Court has adopted a pragmatic

and equitable approach by recognising the genuine confusion that prevailed during the transition period between the two indirect tax regimes. The Court acknowledged that the contractor had effectively suffered double tax exposure i.e. GST recovery by GST authorities and simultaneous Service Tax demand by Service Tax authorities despite the project itself originating in the pre-GST era.

This judgment reinforces that Contracts straddling the pre-GST and post-GST eras must be interpreted in light of their original tax structure and double taxation due to regime change or administrative overlap must be avoided.

Thereby, granting protection to the taxpayers against the arbitrary actions of the taxpayer.

CASE LAW 89

ESSEL KITCHENWARE LTD

VERSUS

THE *JOINT COMMISSIONER OF STATE TAX (LTU)*

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No.11523 of 2024	Section 73 read with Section 16 of the CGST Act, 2017 / WBGST Act, 2017 dealing with adjudication of tax in non-fraud cases and eligibility of Input Tax Credit.
Citation	
(2024) 19 Centax 478 (Cal.)	
Dated	
22.05.2024	

case there appears to be a bonafide error on the part of the petitioners which aspect has not been considered by the proper officer.

— PARA 6, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Assessee, Essel Kitchenware Ltd., was subjected to proceedings under Section 73 of the CGST/WBGST Act, 2017 for the financial year 2017–18. It was observed that while filing GSTR-3B, the assessee had incorrectly reported Input Tax Credit (ITC) on import of goods under **Table 4(A)(5) – "All Other ITC"** instead of reporting the same under **Table 4(A)(1) – "Import of Goods"**, thereby causing discrepancies in the GST system records.

Subsequently, a show cause notice under Section 73(1) was issued by the department and made available on the GST portal. However, the assessee failed to file any response or

appear before the authority as the consultant engaged for GST matters had left without intimating the assessee about the said notice. Due to non-compliance, the proper officer proceeded to pass an order under Section 73(9), disallowing the ITC on the basis that the ITC reflected in the system exceeded the ITC properly reported by the assessee.

The assessee contended that the error was inadvertent, clerical and bonafide in nature, and that the ITC had been correctly reflected in the annual return (GSTR-9). However, due to lack of opportunity, the assessee could not present these facts before the authority. Being aggrieved by the order and alleging violation of principles of natural justice, the assessee filed a writ petition before the Hon'ble Calcutta High Court seeking a fresh opportunity to present its case.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court at Calcutta allowed the writ petition filed by the assessee and set aside the adjudication order passed under Section 73(9) of the CGST/WBGST Act, 2017. The Court observed that the mistake in reporting Input Tax Credit (ITC) was unintentional and occurred because the assessee had shown the ITC under the wrong table in GSTR-3B.

The Court also noted that the assessee could not reply to the show cause notice as the consultant handling GST matters had left the job without informing the assessee about the notice. Due to this, the assessee did not get a proper chance to explain its position before the authority.

The Court emphasized that every taxpayer should be given a fair opportunity to present their case. It held that genuine and minor mistakes should not lead to denial of ITC, especially when there is no intention to evade tax.

Therefore, the Court set aside the order and sent the matter back to the proper officer for fresh consideration. The officer was directed to give the assessee an opportunity to file a

reply within 10 days and be heard, and then pass a fresh order as per law. The Court also directed the assessee to pay a nominal cost of Rs. 50,000/- as a condition for granting this relief.

OUR COMMENTS

This case shows that minor mistakes in reporting should not lead to denial of valid ITC. The assessee reported ITC in the wrong table, but the credit was genuine. The Court held that such clerical errors should not be treated strictly. It also stressed the importance of giving a fair opportunity before passing any order.

CASE LAW 90

M/S FLEMINGO DUTYFREE SHOP PVT. LTD.

VERSUS

THE DEPUTY COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 16974 of 2024	Section 107 read with Section 73 of the CGST/ WBGST Act, 2017 dealing with Appeal to Appellate Authority against order determining tax, interest and penalty
Citation	
(2024) 24 Centax 171 (Cal.)	
Dated	
28.08.2024	

"…the petitioners cannot feign ignorance of the pre-show cause as well as the show-cause notice by contending that its consultant was unwell or remained unreachable…"

— PARA 6, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The Petitioner, Flemingo Dutyfree Shop Pvt. Ltd., was subjected to proceedings under Section 73 of the CGST/ WBGST Act, 2017 for the period April 2018 to March 2019.

The department issued a pre-show cause notice in Form DRC-01A dated 08.10.2023 followed by a show cause notice in DRC-01 dated 05.12.2023; however, the assessee failed to respond to both the notices. Consequently, the proper officer passed an order dated 08.04.2024 confirming the tax demand. The assessee approached the Calcutta High Court by way of a writ petition challenging the order, instead of filing an

appeal under Section 107.

The assessee contended that it was unaware of the notices as its consultant was ill and unreachable, and further argued that a similar issue for the earlier period from July 2017 to March 2018, had already been dropped by the department.

However, no evidence of the consultant's illness was furnished for the period April 2018 to March 2019, and an effective alternative remedy of appeal was available but not availed.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court dismissed the writ petition filed by the assessee and held that the petitioner cannot take excuses of ignorance of the pre-show cause notice and show cause notice on the ground that its consultant was ill and unreachable, especially when no supporting evidence was furnished.

Given the petitioners' failure to respond at the appropriate stage and the availability of an efficacious alternative remedy in the form of an appeal under Section 107 of the Act, the Court held that the petitioners were not entitled to invoke the extraordinary writ jurisdiction of the Court for a first-time adjudication on merits.

Accordingly, the writ petition was dismissed; however, liberty was granted to the assessee to file an appeal within the prescribed time.

OUR COMMENTS

This ruling sends a strong message to all assessee's that ignorance of GST notices whether genuine or claimed, will not be entertained as a ground before courts, particularly when the assessee had ample opportunity to respond at the notice stage itself. The Court held that entities cannot hide behind their consultants when it comes to statutory compliance.

The Court's refusal to entertain the writ petition further highlights that approaching the High Court without exhausting statutory remedies is a practice that will not find favor.

Thus, timely action and proper follow-up are essential to safeguard the assessee's position.

CASE LAW 91

HAHNEMAN'S JACOILVOL GROUP OF PRODUCTS PVT. LTD.

VERSUS

JOINT COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. 18295 of 2024	Section 73/44.

Citation
(2025) 28 Centax 353 (Cal.)

Dated
24.02.2025

…the issuance of show cause notice on the subsequent date is without jurisdiction, barred by limitation and non est.

— PARA 02.

FACTUAL MATRIX

The petitioner, received a show cause notice dated 29.11.2024 under Section 73 for FY 2020–21. The company argued that the notice was issued after the limitation period, which ended on 28.11.2024, and therefore it was invalid and without jurisdiction. They filed a writ petition in the Calcutta High Court challenging this notice.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court, after considering acknowledged that the petitioner argued that the show cause notice dated 29th November 2024 was issued beyond the limitation period,

which had expired on 28th November 2024. The petitioner had invoked the provisions and relied on Notification No. 40/2021, which clarified timelines for filing annual returns and for issuing notices. The Court did not immediately quash the show cause notice but acknowledged the petitioner's jurisdictional challenge that the notice was issued beyond the limitation period. The Court directed the petitioner to participate in the departmental adjudication proceedings to let the matter proceed to a logical conclusion. Hence, if any final order is passed by the department, it shall not be enforced without the Court's permission. Finally, the Court listed the matter for further detailed hearing in April 2025.

OUR COMMENTS

This judgment shows the importance to follow strictly the limitation periods under GST law, emphasizing that any demand notice issued beyond the prescribed time can be challenged as being without jurisdiction. The Court acknowledges the jurisdictional objection and protects the petitioner by preventing immediate enforcement of the final order striking a balance between protecting taxpayer rights and allowing the tax authority to proceed with its statutory duties. It strongly upholds to comply with statutory timelines to avoid procedural lapses that can render their actions invalid.

CASE LAW 92

KALINDEE RAIL NIRMAN (E) LTD

VERSUS

SENIOR JOINT COMMISSIONER OF REVENUE
High Court at Calcutta

Petition/Appeal No. W.P.A. No. 26900 of 2025 **Citation** (2025) 37 Centax 280 (Cal.) **Dated** 08.12.2025	**Relevant Section/Rule** Sections 73, 75(4), and 169 of the CGST Act, which deal with demand proceedings, mandatory personal hearing, and proper service of notices.

Since the show-cause notice was uploaded only under the additional tab as opposed to the normal tab, this Court is of the considered view that such uploading under the additional tab could not constitute due communication of the show-cause 5notice upon the petitioner against whom an adverse decision was contemplated.

— PARA 10.OM NARAYANRAI, J.

FACTUAL MATRIX

The petitioner, Kalindee Rail Nirman (E) Ltd., was subjected to proceedings under Section 73 of the CGST Act pursuant to a scrutiny notice, which it duly responded to. However, subsequent notices (DRC-01A and the Show Cause Notice) as well as the adjudication order were uploaded only under the "additional notices and orders" tab on the GST portal, resulting in the petitioner remaining unaware of the proceedings. The petitioner came to know of the demand only upon initiation of recovery from its electronic cash

ledger and recovery notices issued to petitioner's bank. Consequently, it could not participate in the proceedings or file an appeal within the prescribed time.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

The Court held that uploading notices and orders only under the "additional notices and orders" tab does not amount to proper service, as such a mode of communication fails to ensure that the taxpayer is effectively informed of the proceedings.

It was further observed that the petitioner was not afforded any opportunity to respond or be heard before passing of the adjudication order, which amounted to a clear violation of the principles of natural justice.

Emphasising that under Section 75(4) of the CGST Act, a personal hearing is mandatory wherever an adverse decision is contemplated, the Court held that non-compliance with this statutory requirement renders the order unsustainable in law. Accordingly, the impugned order was set aside, and the petitioner was permitted to file a reply to the show cause notice within the stipulated time, with a direction to the adjudicating authority to complete the proceedings afresh in accordance with law.

OUR COMMENTS

Calcutta HC has once again reinforced that procedural fairness under GST is not a formality – it is a statutory command. The judgment cements a clean line of precedent that the "Additional Notices and Orders" tab is a service no-man's-land, and uploading there is no service at all. Equally significant is the reaffirmation that Section 75(4)'s second limb – "adverse decision contemplated" – is a suo-motu obligation triggered by the SCN itself, requiring no written request from the assessee. The petitioner's ctical decision to not press the vires challenge and instead anchor on natural justice kept the case razor-focused and yielded a clean win.

CASE LAW 93

KKALPANA INDUSTRIES (INDIA) LTD.

VERSUS

ADDITIONAL COMMISSIONER OF CGST & CX
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 21011 of 2024	Section 74 read with Section 25 of the CGST/ WBGST Act, 2017 that deals with tax evasion or wrongful ITC involving fraud between distinct persons.
Citation	
(2024) 24 Centax 89 (Cal.)	
Dated	
26.09.2024	

"Taking note of the prima facie case made out by the petitioners, inter alia, including the clarification offered by the Central Board of Indirect Taxes and Customs dated 17th July, 2023, I am of the view that the petitioners are entitled to a limited protection"

— PARA 8, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The assessee, *KKalpana Industries (India) Ltd*., is a registered taxpayer having its Head Office in Kolkata and branch offices across different states, was subjected to proceedings under Section 74 of the CGST/WBGST Act, 2017 for the period July 2017 to March 2022.

The department issued a show cause notice dated 30.07.2024 alleging non-payment of GST on services provided by the Head Office to its branch offices. It was contended that since the Head Office and branches are considered as "distinct

persons" under Section 25 of the CGST Act, and therefore, any supply of services between them, even without consideration, is deemed to be taxable in terms of Section 7 read with Schedule I. It was further alleged that the assessee failed to discharge tax liability by not issuing tax invoices under the cross-charge mechanism for such services.

Aggrieved by the issuance of the show cause notice, the assessee filed a writ petition before the Hon'ble Calcutta High Court challenging its validity.

The assessee contended that it had been distributing common input tax credit through the Input Service Distributor (ISD) mechanism in accordance with Section 20 of the CGST Act and had directly allocated expenses attributable to specific units. It was further argued that, as per the CBIC Circular dated 17.07.2023, where full input tax credit is available to the recipient, the value of services between Head Office and branch can be treated as NIL and therefore no tax liability arises.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition held that:-

1) The **Circular No. 199/11/2023-GST** dated 17.07.2023 issued by the CBIC provides detailed clarification which indicates that where **full Input Tax Credit (ITC) is available to the recipient branch**, and the **head office does not issue a tax invoice** for services rendered to the branch, the **value of such services may be deemed as 'nil'**. This is in accordance with the **second proviso to Rule 28 of the CGST Rules**, which allows the value to be treated as the **open market value**, effectively **zero**, in such cases is duly noted and acknowledged.

2) The writ petition raises a jurisdictional issue, and since a prima facie case has been made out by the Petitioners, they are entitled to a certain protection bearing in mind the clarification afforded by the CBIC dated 17.07.2023.

3) Under the facts and circumstances of the instant matter, an interim stay has been granted to the assessee. Any demand order, if passed, by the department shall not be given effect to without the leave of the Court.

OUR COMMENTS

Section 74 can only be invoked when material evidence is available to substantiate the occurrence of fraud, wilful misstatement or suppression of facts. Without proper evidence, the officer cannot establish a claim based on personal whim or perception. It has to be brought on record the reasons for such invocation of extended period corroborating it with valid evidence and not just with baseless allegations without reasonable backing.

CASE LAW 94

COMMISSIONER OF CGST AND CX, KOLKATA SOUTH COMMISSIONERATE

VERSUS.

KTECH ENGINEERING BUILDERS COMPANY PVT. LTD.
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
CEXA No. 21 of 2022 and I.A. No. GA 1 of 2022	Section 35G of the Central Excise Act, 1944
Citation (2023) 10 Centax 398 (Cal.)	
Dated 22.12.2022	

since already the adjudicating authority has decided against the respondent/assessee and the assessee is before the Commissioner (Appeals) by way of appeal, all issues can be canvassed in the pending appeal and, therefore, the order passed by the learned Tribunal need not be disturbed.

— PARA 06, PER T.S. SIVAGNANAM, C.J. AND HIRANMAY BHATTACHARYYA, J.

FACTUAL MATRIX

- The Revenue (Commissioner of CGST and CX, Kolkata South Commissionerate) filed an appeal under Section 35G of the Central Excise Act, 1944 before the High Court of Calcutta, challenging final order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata (Tribunal).

- The Tribunal had dismissed the Revenue's appeal as having become 'infructuous'. The Revenue contended before the High Court that the Tribunal ought to have adjudicated the appeal on merits instead of dismissing it as infructuous, and that failure to do so violated the principles of natural justice.
- Meanwhile, pursuant to the order dated 10.09.2021 passed by the Commissioner (Appeals), the Order-in-Original dated 28.02.2018 was set aside and the matter was remanded to the adjudicating authority for reconsideration of the refund claim.
- The Commissioner (Appeals) further directed that the Military Engineering Service (MES) should also pursue the refund claim as a co-applicant. Thereafter, the adjudicating authority undertook de novo adjudication, impleaded MES as co-applicant, and passed a fresh order dated 08.02.2022 against the assessee.
- Aggrieved by the fresh adjudication order, the assessee preferred an appeal before the Commissioner (Appeals), which remained pending.
- The Revenue challenged the Tribunal's order before the High Court under Section 35G of the Central Excise Act, 1944, particularly disputing the findings of the Commissioner (Appeals) regarding impleadment of MES as co-applicant.

JUGDMENT/ORDER OF THE AUTHORITY

1. The Hon'ble Division Bench held that since the adjudicating authority had already decided against the respondent/assessee and the assessee had filed an appeal before the Commissioner (Appeals), all issues — including those agitated by the Revenue regarding MES being joined as co-applicant — could be canvassed in the pending appeal before the Commissioner (Appeals).

2. The Court held that the order passed by the learned Tribunal need not be disturbed in view of the subsequent developments and accordingly disposed of the Revenue's appeal (CEXA No. 21 of 2022) on the above ground, leaving the substantial questions of law open.

3. The connected application for stay (I.A. No. GA 1 of 2022) was also consequently closed.

OUR COMMENTS

This ruling demonstrates the pragmatic approach adopted by the High Court of Calcutta in avoiding multiplicity of proceedings. Rather than adjudicating the merits of the Revenue's challenge to the Tribunal's order, the Court took note of subsequent developments and directed that all issues be resolved in the pending appeal before the Commissioner (Appeals).

The decision reinforces the principle that Courts will not disturb prior orders of appellate authorities where the matter is already sub judice at a lower forum and all grievances can be adequately addressed therein.

It also highlights that once de novo adjudication has been completed and a fresh appeal is pending, it is more efficient and appropriate to canvass all objections including those of the Revenue in that forum, rather than pursue parallel proceedings before the High Court.

CASE LAW 95

MRS. ANJITA DOKANIA, PROPRIETOR OF MI TELCOM

VERSUS

THE STATE TAX OFFICER, BUREAU OF INVESTIGATION (SOUTH BENGAL), DURGAPUR ZONE AND ORS.

High Court of Calcutta.

Petition/Appeal No.	**Relevant Section/Rule**
W.P. No.23839 of 2024	Rule 86 A (3) of the CGST/ WBGST Rules, 2017 concerning one-year limitation on blocking of Electronic Credit Ledger, read with Sections 67 and 74 of the CGST/WBGST Act, 2017 relating to search proceedings and adjudication in fraud cases.
Citation	
2026 TAXSCAN (HC) 189	
Dated	
07.01.2026	

The Rule reads in mandatory terms and leaves no room for any confusion that the restriction would cease after one year from the date of its imposition.

— OM NARAYAN RAI, J.

FACTUAL MATRIX

The petitioner, Mrs. Anjita Dokania, proprietor of M/s M I Telecom, filed a writ petition before the Calcutta High Court challenging the actions of the GST authorities. The dispute arose after search operations were conducted under Section 67 of the CGST/WBGST Act, 2017, following which the

petitioner's Electronic Credit Ledger was blocked on 9 November 2023 under Rule 86A of the GST Rules. Subsequently, an adjudication order under Section 74 of the Act was passed against the petitioner on 5 July 2024.

The petitioner argued that the continued blocking of the Electronic Credit Ledger beyond one year was illegal and contrary to Rule 86A (3), which clearly provides that such restriction automatically ceases after one year from the date of imposition. The petitioner also challenged the legality of the search proceedings on the ground that proper "reasons to believe" were not disclosed and further questioned the jurisdiction of the Bureau of Investigation officer to adjudicate the proceedings under Section 74.

After hearing both parties, the High Court observed that Rule 86A (3) is mandatory in nature and does not permit continuation of blockage beyond one year. Accordingly, the Court directed the GST authorities to immediately unblock the petitioner's Electronic Credit Ledger and also restrained them from taking coercive steps pursuant to the adjudication order until further consideration of the matter.

JUGDMENT/ORDER OF THE AUTHORITY

The Calcutta High Court held that Rule 86A (3) of the CGST/WBGST Rules, 2017 clearly provides that restriction on the Electronic Credit Ledger can remain in force only for a period of one year from the date of its imposition. The Court observed that the language of the Rule is mandatory and leaves no scope for continuation of the blockage beyond the statutory period. Since the petitioner's Electronic Credit Ledger had been blocked on 9 November 2023 and the period of one year had already expired, the Court directed the GST authorities to immediately withdraw the restriction imposed on the ledger.

The Court also took note of the petitioner's challenge regarding the legality of the search proceedings under

Section 67 and the jurisdiction of the Bureau of Investigation officer to adjudicate proceedings under Section 74 of the CGST/WBGST Act, 2017. Observing that similar jurisdictional issues had already been entertained in earlier cases, the Court considered it appropriate to seek a detailed affidavit from the respondent authorities regarding the legality of the search operations and the authority exercised by the concerned officer.

Pending further consideration of the matter, the Court restrained the GST authorities from taking any coercive action against the petitioner on the basis of the impugned adjudication order. The respondents were directed to file their affidavit, and the matter was listed for further hearing on 28 January 2026.

OUR COMMENTS

This interim order is a useful demonstration of how a well-layered writ can secure meaningful threshold relief on multiple grounds. The most significant takeaway is the Court's unequivocal affirmation that Rule 86A(3) is mandatory and self-executing — the one-year ceiling on credit ledger blocking "shall cease to have effect" automatically, leaving no room for departmental discretion to perpetuate the restriction. Tellingly, the Revenue itself offered little resistance on this score. he jurisdictional challenge to Bureau of Investigation officers exercising adjudicatory powers remains alive, with the Court granting interim protection against coercive action pending an affidavit from the Revenue and final hearing — a substantive ruling on this aspect is awaited and could prove consequential for Bengal practice.

CASE LAW 96

NEPTUNE HOLIDAYS PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF CGST
High Court of Sikkim at Gangtok

Petition/Appeal No. W.P. (C) No. 20 of 2024 **Citation** (2025) 28 Centax 268 (Sikkim) **Dated** 21-02-2025	**Relevant Section/Rule** Section 107, CGST Act, 2017 – relates to appeals; highlights that proceedings should not continue when the matter is pending before the High Court.

GST demand orders passed during pendency of an admitted writ petition cannot be pursued further.

— PARA 4, PERBHASKAR RAJ PRADHAN, J.

FACTUAL MATRIX

The Petitioner, Neptune Holidays Pvt. Ltd., filed a writ petition before the Hon'ble High Court to challenge the GST proceedings initiated by the department, the Court admitted the petition. However, even while the case was pending before the Court, the Respondent authorities continued the adjudication process and issued demand orders along with summaries in Form GST DRC-07 dated 30.01.2025 and 05.02.2025. Aggrieved by this, the Petitioner again approached the Court seeking a stay on these orders, arguing that continuing the proceedings during the pendency of the writ petition was improper and against judicial discipline

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court, while admitting the petition, elucidated that the High Court said that the case was already accepted earlier, but still the department continued the process and passed demand orders. This was done even though the matter was pending before the Court.

The Court also noticed that the department did not file its reply (counter affidavit) even after getting many chances. This showed a lack of proper response from their side.

The Court said that, at first look, the department was not right in continuing the proceedings while the case was already in Court. Such action was not proper and ordered that the demand orders will not be used for now. The Petitioner was given relief until the Court gives its final decision

OUR COMMENTS

This case reaffirms that once a matter is admitted before a High Court, the department should not continue parallel proceedings on the same issue. Continuing adjudication during the pendency of a writ petition goes against the principles of judicial discipline and may result in unnecessary litigation.

The judgment also clarifies that taxpayers have the right to seek interim relief where the department proceeds with actions despite the matter being under judicial consideration.

CASE LAW 97

REAN WATERTECH PVT LTD.

VERSUS

THE *COMMISSIONER OF STATE TAX*
Supreme Court of India

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No. 21011 of 2024	Section 74 read with Section 25 of the CGST/ WBGST Act, 2017 that deals with tax evasion or wrongful ITC involving fraud between distinct persons.
Citation	
(2024) 24 Centax 89 (Cal.)	
Dated	
26.09.2024	

The Special Leave Petition is dismissed as withdrawn reserving liberty to the petitioner to file a statutory appeal before the Appellate Authority within a period of one month from today. It is needless to observe that if such an appeal is filed within the aforesaid timeframe, the issue of limitation shall not be raised by the Appellate Authority.

— PARA 3 - MRS. B V NAGARATHNA AND DIPANKAR DUTTA , J.J.

FACTUAL MATRIX

The assessee, Rean Watertech Pvt. Ltd., received a GST demand order from the State Tax authorities under the CGST Act, 2017. Instead of filing an appeal under Section 107, the assessee filed a writ petition before the High Court, challenging the order on the ground of defects in the show cause notice and adjudication.

The Hon'ble High Court dismissed the writ petition, stating

that there was no violation of natural justice and that the assessee had an alternative remedy of appeal available under the law.

The assessee then filed a Special Leave Petition before the Hon'ble Supreme Court. During the hearing, the assessee requested permission to withdraw the petition and file an appeal instead.

The Hon'ble Supreme Court allowed the withdrawal and permitted the assessee to file an appeal within one month. It also directed that no limitation issue should be raised if the appeal is filed within this time.

JUGDMENT/ORDER OF THE AUTHORITY

The Hon'ble Supreme Court did not examine the case on merits. Instead, it allowed the assessee to withdraw the Special Leave Petition after noting the request made by the assessee during the hearing.

The Court granted liberty to the assessee to file a statutory appeal before the appropriate appellate authority within a period of one month. To ensure fairness, the Court also directed that if the appeal is filed within this time, the appellate authority should not raise the grounds of limitation.

OUR COMMENTS

This judgment is a significant relief for taxpayers who, while pursuing genuine grievances, inadvertently chose the writ route over the statutory appeal. The Supreme Court's direction that limitation shall not be raised if the appeal is filed within the permitted period is a direct acknowledgment that procedural misdirection should not extinguish substantive rights.

It is well settled that courts of equity do not permit the technicality of limitation to defeat a just cause, particularly

where the delay is attributable to a bona fide but mistaken choice of forum. The assessee in the present case was not guilty of laches it was actively litigating before competent forums at all material times. The Supreme Court's intervention, though limited in scope, sends a clear signal that the justice delivery system will not penalise a taxpayer for navigating procedural complexity in good faith.

CASE LAW 98

SAPTARSHI

VERSUS

DEPUTY COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION, SOUTH BENGAL
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
W.P.A. No.14984 of 2024	Section 73 read with Section 128A of Central Goods and Services Act, 2017/West Bengal Goods and Services Act, 2017
Citation	
(2024) 22 Centax 511 (Cal.)	
Dated	
20.08.2024	

"…I am of the view that the matter requires reconsideration by the respondent no. 1."

— PARA 10, RAJA BASU CHOWDHURY, J.

FACTUAL MATRIX

The petitioner challenged three orders passed under Section 73 of the CGST/WBGST Act, 2017 for the tax periods August 2017 to March 2020, whereby tax, interest and penalty demands were confirmed against the petitioner. The dispute arose in relation to contracts awarded during the pre-GST and post-GST period, where the petitioner contended that the concerned Government Departments were liable to reimburse the additional GST burden in terms of directions issued by the Additional Chief Secretary, Finance Department, Government of West Bengal.

Subsequently, during pendency of the writ petition, the petitioner received payment from the contractee department towards such GST liability and discharged the entire tax demand through FORM GST DRC-03 dated 29.07.2024. The petitioner further relied upon the newly inserted Section 128A of the CGST Act, 2017, introduced pursuant to the recommendations of the 53rd GST Council Meeting, to contend that upon payment of the full tax amount, the proceedings stood liable to be concluded without levy of interest or penalty.

Accordingly, the petitioner sought reconsideration of the impugned orders in light of the newly inserted Section 128A and the subsequent payment of tax liability.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble Calcutta High Court, taking note of the payment made by the petitioner towards the tax liability through Form GST DRC 03 and the subsequent amendment to the CGST Act introducing Section 128A, held that the matter required reconsideration by the competent GST authority.

Accordingly, the Hon'ble Court remanded the matter back to the respondent authority with a direction to pass a fresh reasoned order after reconsidering the issue in light of Section 128A and the payment made by the petitioner.

The Hon'ble Court further ordered that, until such fresh reasoned order is passed, the impugned orders along with the demand notices issued in Form GST DRC 07 shall remain stayed. Accordingly, the writ petition was disposed of with the above directions.

OUR COMMENTS

This decision underscores the significance of the newly introduced Section 128A of the CGST Act in cases where the taxpayer has already discharged the full tax liability. The Court has emphasized that such statutory amendments,

which potentially confer substantive relief (including deemed conclusion of proceedings), must be duly considered by the adjudicating authorities.

The ruling reflects a balanced approach by ensuring procedural fairness through reconsideration, while also protecting the taxpayer from coercive recovery during the interim period. It highlights the necessity for authorities to align their decisions with legislative developments and factual compliance on record.

CASE LAW 99

SARRALLE EQUIPMENT INDIA PVT. LTD.

VERSUS

COMMISSIONER OF CENTRAL EXCISE, KOLKATA-II
High Court at Calcutta

Petition/Appeal No.	**Relevant Section/Rule**
CEXA No. 35 of 2024 and I.A. No. GA 1 of 2024	Section 4, Central Excise Act, 1944 – relates to valuation of excisable goods; bought-out items directly supplied to customer site are not includable in assessable value if not manufactured by the assessee.
Citation (2025) 29 Centax 29 (Cal.)	
Dated 26-02-2025	

It was pointed out by the Hon'ble Supreme Court thatthe question whether value of bought-out-items should be added for computing the assessable value would depend on facts oneach case. Thus, on facts, the Tribunal has found that the bought-out-items are supplied to the customer's place and they getembedded to earth and they are immovable property and the question of including the value in the assessable value for thepurpose of demanding central excise duty would not arise.

— PARA 8 PER T.S. SIVAGNANAM, C.J. AND CHAITALI CHATTERJEE (DAS).

FACTUAL MATRIX

The assessee was engaged in the manufacturing of industrial furnaces using both self-manufactured parts and bought-out items supplied directly to the customer site. The department alleged that the value of such bought-out items was not

included in the assessable value, resulting in short payment of duty. The assessee contended that these items were neither manufactured nor cleared from the factory and were used at site where the structure became immovable property. However, the department treated them as essential components and included their value, leading to a dispute on valuation.

JUGDMENT/ORDER OF THE AUTHORITY

The Court clarified that items purchased from outside and supplied directly to the customer's site cannot be added to the assessable value, since they were neither manufactured by the assessee nor cleared from the factory.

The Court further noted that once the furnace is assembled at the site and fixed to the earth, it becomes an immovable structure. In such a situation, the components used lose their identity as "goods," and excise duty cannot be applied to them.

Finally, the Court agreed with the Tribunal's reasoning, emphasizing that the law had been correctly applied. As a result, the department's appeal was dismissed and the relief granted to the assessee was upheld.

OUR COMMENTS

The Calcutta High Court has rightly reaffirmed that bought-out items supplied directly to the customer's site and embedded into an immovable structure cannot be added to the assessable value of the manufactured product.

The Court's reliance on the Koron Business Systems line is significant — it draws a clean distinction between items "required for working" of a machine and those forming "part and parcel" of it, a conflation the Revenue routinely attempts.

Mil India Ltd. is handled with admirable judicial discipline — its ratio that valuation is fact-driven is accepted, and the same principle is then applied to reach the opposite conclusion on the facts at hand.

CASE LAW 100

SUPREME INFOTRADE PVT. LTD.

VERSUS

ASSISTANT COMMISSIONER OF STATE TAX
High Court at Calcutta

Petition/Appeal No. WPA No. 11681 of 2025	**Relevant Section/Rule** Section 73 read with Section 107, Section 107(6), and Section 112(8) of the CGST / WBGST Act, 2017
Citation (2025) 33 Centax 251 (Cal.)	
Dated 06-08-2025	

Where pursuant to demand raised against assessee, recovery of entire demand amount was made even before expiry of statutory period for preferring appeal, respondents at best could retain 20 percent of disputed tax amount and balance amount was to be refunded

FACTUAL MATRIX

The Petitioner, Supreme Infotrade Pvt. Ltd., challenged the rejection of its refund claim and sought re-credit/refund of the excess amount recovered by the GST authorities. An order under Section 73 of the CGST/WBGST Act, 2017, dated June 14, 2023, was passed against the petitioner for the tax period of July 2017 to March 2018. Before the statutory period to prefer an appeal under Section 107 expired, the respondents debited the petitioner's electronic credit ledger on August 3, 2023, recovering the entire demand raised in the order.

Aggrieved by such premature recovery, the Petitioner made representations before the authorities; however, no relief was granted. Subsequently, the Petitioner filed a statutory appeal under Section 107, which was disposed of by partially modifying the adjudication order and issuing a revised demand in Form GST APL-04.

Following the revised demand, the appellant requested the respondents to retain 20% of the disputed tax amount and re-credit the balance, but this request was ignored. The Petitioner thereafter filed a refund application in Form GST RFD-01, which was rejected on the ground that no refund order had been passed by any competent authority. Aggrieved by such rejection and continued retention of the excess amount, the Petitioner approached the Hon'ble Calcutta High Court by way of writ petition.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court at Calcutta, while disposing of the writ petition, held that:

1. The tax authorities committed a grave error by recovering the entire tax demand prior to the expiry of the statutory period allowed for preferring an appeal.

2. The rejection of the subsequent refund application, on the premise that no refund order existed, was completely irrational, especially since the respondents continued to hold the amount despite repeated representations.

3. Under the statutory framework of Section 107(6) and Section 112(8) of the Act, the respondents are at best entitled to retain 20% of the disputed tax amount (representing the mandatory pre-deposits for the first appellate authority and the appellate tribunal).

Consequently, the Court set aside the refund rejection order dated March 11, 2025, and directed the respondent to refund the balance excess amount to the petitioner's electronic credit

ledger within one week.

OUR COMMENTS

The decision in Supreme Infotrade Pvt. Ltd. stands as a strong judicial reminder that the power of recovery under the GST regime is not absolute and must operate strictly within the confines of the statutory framework. The Hon'ble Calcutta High Court condemned the action of the authorities in recovering the entire disputed demand even before expiry of the statutory appeal period, thereby safeguarding the sanctity of appellate remedies guaranteed under the law.

By directing refund of the excess amount retained beyond the prescribed pre-deposit, the Court reinforced that taxpayer rights cannot be defeated through coercive or premature recovery mechanisms. The ruling not only upholds the principles of natural justice and procedural fairness but also sends a clear message that revenue considerations cannot override statutory protections specifically designed to ensure a fair and balanced adjudicatory process under GST.

CASE LAW 101

TYCOON INDUSTRIES PVT LTD

VERSUS

EASTERN COALFIELDS LTD
High Court of Jharkhand at Ranchi

Petition/Appeal No. W.P. (T) No. 1461 of 2023 **Citation** (2024) 18 Centax 432 (Jhar.) **Dated** 02.04.2024	**Relevant Section/Rule** Relevant provisions were Sections 16, 37 and 39 of the CGST Act and Rules 59 and 60 of the CGST Rules relating to ITC, GSTR-1 rectification and return filing.

The writ Court while exercising its jurisdiction and powers under Article 226 of the Constitution of India shall remainalive to the considerations whether the relief sought is barred by any law or the relief if granted shall be in the public interest.The writ Court shall also remain conscious that it has to adjudicate the prayer made in the main petition and should not travelbeyond that merely because some statement of fact has been made or brought on record by filing supplementary affidavit.

— PARA 13. SHREE CHANDRASHEKHAR, ACTG. C.J. AND NAVNEET KUMAR, J.

FACTUAL MATRIX

The petitioner, Tycoons Industries Pvt. Ltd. provided mining and transportation services to Eastern Coalfields Limited. During reconciliation of GST returns for FY 2017-18 to 2021-22, it discovered that certain invoices were either not uploaded in GSTR-1 or wrongly reported as B2C instead of

B2B due to clerical errors. As a result, the invoices did not appear in Eastern Coalfields Limited's GSTR-2A/2B, causing denial of ITC and recovery deductions by Eastern Coalfields Limited from the petitioner's bills. The petitioner contended that tax had substantially been paid through GSTR-3B and DRC-03 and sought permission to rectify the errors in GSTR-1 beyond the prescribed time limit.

JUDGMENT/ORDER OF THE AUTHORITY

The Hon'ble High Court while admitting the petition elucidated that:

The Jharkhand High Court held that rectification of GSTR-1 errors beyond the statutory time limit prescribed under Sections 16 and 37 of the CGST Act cannot ordinarily be permitted through writ jurisdiction.

The Court observed that under the GST regime, taxpayers are responsible for proper self-assessment, accurate disclosure of invoices and timely filing of returns, and therefore cannot claim ignorance of statutory requirements.

The Court distinguished the case from Mahalaxmi Infra Contract Ltd. v. GST Council by noting that the present matter involved multiple discrepancies across several financial years, absence of complete invoice correlation and delayed discharge of tax liability.

The Court further held that the GST portal is merely a facilitative mechanism and technical or procedural difficulties cannot be used to override the statutory framework of the CGST Act.

Concluding that the petitioner had failed to furnish correct and sufficient particulars and that relief under Article 226 could not be granted contrary to statutory limitations, the Court dismissed the writ petition.

OUR COMMENTS

With great respect, the decision merits a closer second look, as the petitioner had in substance discharged the tax through GSTR-3B and DRC-03, and the rectification sought was largely revenue-neutral with no real loss to the exchequer. The denial of ITC in such circumstances tends to defeat the very seamless-credit philosophy on which the GST regime is built, especially where the underlying tax has admittedly reached the Government. The line of distinction drawn from Mahalaxmi Infra Contract Ltd. is fact-specific and arguably narrow, since the principle that genuine, revenue-neutral clerical errors deserve a curative remedy applies with equal force here. It is also relevant that the petitioner was navigating the unprecedented disruption caused by COVID-19, a factor that ordinarily weighs in favour of an equitable approach. Significantly, the matter is presently sub judice before the Hon'ble Supreme Court, where the operation of the impugned judgment is understood to have been stayed, and the larger question of whether substantive ITC can be denied purely on procedural grounds is yet to attain finality. Until then, the law in this area must be regarded as fluid, and assessees similarly placed would do well to keep their remedies open and well-pleaded

CHARTERED ACCOUNTANTS
SKKA
S.K. KANODIA & ASSOCIATES

39A, Jorapukur Square Lane (Behind Girish Park)
Room # 202, Kolkata - 700 006, WB, INDIA
T | (033) 7960-9924 E | info@skkassociates.com
W | www.skkassociates.com

ANKIT KANODIA & CO.
ADVOCATES

39A, Jorapukur Square Lane (Behind Girish Park)
Room # 205, Kolkata - 700 006, WB, INDIA
T | 98315-43580 E | ankit@advocateak.com