

WPA 3965 of 2025

**Dharmendra Singh
versus
Deputy Commissioner of Revenue, Bally & Salkia
Charge & Ors.**

Mr. Sandip Choraria
Mr. Rishav manna

...For the petitioner

Mr. T.M.Siddiqui, Ld. AGP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...For the State

1. Challenging the order dated 23rd February 2024 passed by the appellate authority under Section 107 of the WBGST /CGST Act, 2017 (hereinafter referred to as the "said Act") dismissing the appeal on the ground of delay, the instant writ petition has been filed.
2. The petitioner's case proceeds on the premise that the petitioner is a registered tax payer and in usual course of business dealings and transactions had transacted with one Balaji Trading Co. and had availed and utilized ITC in respect of the transactions that he did with Balaji Trading Co. between June 2019 and November 2019. Later, the registration of Balaji Trading CO. Ltd. which is a proprietorship firm of Asha Sen having been cancelled under the provisions of Section 29(2)(e) of the said Act, a proceeding under Section 74 of the said Act was initiated by issuing a show cause notice dated 21st March 2022. Even prior to issuance of the show cause notice, a notice in form GST DRC 01- was 2 issued on 5th January 2022 notifying the petitioner of the discrepancies.

3. Records would reveal that the petitioner had voluntarily made part payment of the demand made in form GST DRC – 01A by claiming such payment be treated as payment made under Section 73(5) of the said Act. Such payments were made on 24th March 2022 and 27th May 2022 in form DRC-03.
4. Records reveal that, the petitioner did not respond to the show cause and also did not personally appear before the proper officer on 4th April 2022, being the date fixed for personal hearing. Records would also reveal that the proper officer by proceeding on the premise that the petitioner had taken advantage of certain fictitious transactions and on the basis thereof, had availed and utilized ITC and also having partially complied with the notice in Form GST DRC – 01, proceeded to hold that the petitioner is liable to make payment of the balance amount and had accordingly determined the balance tax component, interest component and the penalty payable by the petitioner vide his order dated 17th February, 2024.
5. In furtherance to the above, the respondents had recovered the entire tax from the petitioner's Electronic Credit Ledger under the heading "*outstanding demand*" partly on 14th April 2023 and the balance on 16th May 2023, i.e., even before the expiry of three months from the date of passing of the order. The petitioner had since preferred an

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appeal. Such appeal had also been turned down on the ground of delay.

6. The learned advocates for the parties have since advanced arguments. From the documents on record, it would transpire that the petitioner had made voluntary payment under the provisions of Section 73(5) of the said Act. Although, the proceeding was not contested by the petitioner, however, the proper officer had treated the aforesaid payment to be the payment made in compliance with the show cause notice, though the record would speak otherwise. In my view, ordinarily in such circumstances, having regard to the payment being made voluntarily under Section 73(5) of the said Act, an explanation ought to have been sought for from the petitioner in this regard. None could enlighten the Court as regards and further explanation being sought for from the petitioner. Further even before the statutory period for preferring the appeal had expired, a part of the outstanding demand had been recovered on 14th April 2023 and the balance had been recovered on 16th May 2023. The appeal filed by the petitioner on 6th January 2024 was also rejected on the ground that there is no scope to accept the appeal beyond the prescribed period provided for.
7. Ordinarily, the petitioner could have assailed the said order by preferring a further appeal before the appellate tribunal. But since the appellate tribunal is yet to be constituted, the petitioner has approached this Court. Having regard to the peculiar facts

narrated above and by noting that the entire amount of tax has ready been recovered from the petitioner, I am of the view that the matter is required to be remanded back to the proper officer for providing an opportunity to the petitioner to explain the circumstances under which the payment was made voluntarily under Section 73(5) of the said Act.

8. In view thereof, while setting aside the orders dated 23rd February 2024 and 17th February 2023, I

remand the matter back to the proper officer for an adjudication on merits. The petitioner shall be at liberty to respond to the show cause notice within two weeks from date. It is made clear that if no response is filed by the petitioner within the aforesaid period, the proper officer shall decide the case in accordance with law without the petitioner's response.

9. With the above observations and directions, the writ petition is disposed of.
10. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)