

Form No.J(2)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1698 of 2025

**Sunil Kumar Podder
-versus-
Union of India & Ors.**

For the petitioner	:	Dr. Avinash Poddar Mr. Dhiraj Lakhotia Ms. Radhika Agarwal Ms. Meghna Joshi Mr. Nigam Mittal
For the respondents	:	Mr. Dilip Kumar Agarwal Mr. Biswa Raj Agarwal
Heard on	:	20.08.2025.
Judgment on	:	20.08.2025

Raja Basu Chowdhury, J. (Oral):

1. The instant writ petition has been filed not only challenging the determination made under Section 73 of the CGST Act, 2017 (hereinafter referred to as the "said Act") dated 9/11th March 2024 concerning excess refund released for the Financial Year

2020-21, but also the appellate order dated 23rd February, 2023 passed by the appellate authority under Section 107 of the said Act arising out of the refund sanction order dated 11th March, 2021.

2. The petitioner's case proceeds on the premise that in connection with an appeal filed by the department challenging the refund sanction order dated 11th March, 2021 since, the petitioner could not demonstrate and/or prove that it had exported a consignment worth Rs.89,84,400/-, for the same could not be considered as a zero rated supply in order to be entitled for refund, the appellate authority had directed recalculation of the refundable amount. Consequent thereon a proceeding under Section 73 of the said Act had been initiated to recover the excess amount of refund.
3. Ms. Joshi, learned advocate appearing in support of the writ petition has drawn the attention of this Court to the appellate order and has tried to impress upon this Court that although at the relevant point of time the petitioner had disclosed the bills for export of goods, however, since the same were not certified by the Superintendent and were only certified by the Inspector, the appellate authority had discounted such documents. According to her, immediately after the date of personal hearing was over, the petitioner could obtain approved copies of the manual shipping bills from the Superintendent which would

demonstrate that it had exported the consignment of Rs.89,84,400/-and thus, the same was entitled to be considered as zero rated supply. She would submit that if the aforesaid documents are reconsidered by the appellate authority, the very basis of the order passed by the appellate authority would stand altered. It is still further submitted that consequent upon the aforesaid appellate order dated 23rd February, 2023 having been passed the respondents had proceed to initiate proceeding under Section 73 of the said Act, to recover the amount which become recoverable on the basis of the re-computation of the refundable amount in terms of the direction passed by the appellate authority. In the light of the above, she would submit that it is necessary to reconsider the aforesaid issue as the basis of the proceeding under Section 73 of the said Act is dependent upon recomputation as directed by the appellate authority. She would further submit that in terms of the order passed by this Court on 18th August, 2025, the petitioner is ready and willing to keep in security, the determined amount of Rs.32,17,600/- which was directed to be recovered and in that context she would submit that in terms of an order of attachment issued in Form DRC 13 dated 17th June, 2025, in furtherance to the demand made in DRC 07 dated 11th March 2023 a sum of Rs.35,39,360/- has already been attached and the fixed deposit maintained by the petitioner with the Punjab National Bank has been marked

„lien“ to the extent of Rs.35,39,360. Such fact would also corroborate from the communication issued by the petitioner’s banker dated 19th August, 2025, a copy thereof, as placed before this Court is retained with the records.

4. Mr. Agarwal, learned advocate appears on behalf of the respondents. At the very outset he would submit that the petitioner by the instant writ petition is attempting to reopen an order passed by the appellate authority which has long been settled. In fact, no challenge was pressed against the order dated 23rd February, 2023 for more than two and a half years. Further despite the fact that a determination had been made under Section 73 of the said Act on 9th March, 2024, no steps had been taken by the petitioner to challenge the same. The demand in connection therewith has also been raised long back i.e. on 11th March, 2024. It is only after the attachment order has been issued that the petitioner has approached this Court. According to him at this stage, after the ordinary period for preferring the appeal has expired, no opportunity should be granted to reopen such case. Independent of the above, he would submit that although, the petitioner’s case proceeds on the premise that the export documents were not available with the petitioner when the personal hearing was afforded by the appellate authority, however, on a perusal of the export documents relied on which have been certified by the Superintendent would demonstrate

that such documents were certified by the Superintendent prior to the date of personal hearing and on such ground no reliance ought to be placed on the submission made by the petitioner. No interference is called for.

5. Having heard the learned advocates appearing for the respective and having considered the materials on record, I find that the petitioner's application for refund in Form RFD 01 was initially allowed by refund sanction order in Form RFD 06 dated 11th March, 2021. On an appeal filed by the department, the appellate authority found that the petitioner had failed to substantiate the zero rated supplies inasmuch as the petitioner could not demonstrate/prove the export by supporting documents and accordingly became ineligible to be entitled to zero rated supply pertaining to export consignment for a sum of Rs.89,84,400/-. It may be noted that although, the manual export bills had been disclosed, such bills had not been certified/cleared by the proper officer of Customs, being the Superintendent. Only preventive clearance certificates of the inspector was available. As according to the appellate authority shipping bills duly accessed and cleared by the proper officer of Customs under the provisions of Section 50 and 51 of the Customs Act, 1962 are the only documents which can be treated as proof of export.

Later, the petitioner could, however, obtain such certification from the

Superintendent. It is true that on the date when the personal hearing was given to the petitioner i.e. on 18th January, 2023 the documents on record would demonstrate that the shipping/export bills had already been certified by the Superintendent of Customs.

However, in my view simply because the petitioner could not produce the relevant documents the same cannot remove the effect of the shipping bills. This Court cannot shut its eyes to the above disclosure, as the same might have the effect of altering the basis for directing recomputation of the refund. Since, the order passed under Section 73 of the said Act is based on a direction issued by the appellate authority arising out of the department's appeal whereupon the petitioner's refund sanction order was directed to be revised by recomputing the refund and since today, the petitioner is in custody of valid documents and is in a position to demonstrate that the petitioner had actually export the goods, I am of the view that the entire matter would require reconsideration on merits by the appellate authority to avoid failure of justice.

6. Having regard thereto, and while directing the petitioner's banker, being the Punjab National Bank, Sevak Road, Siliguri, West Bengal, IFSC PUNB0319600 to treat the Fixed Deposit held in lien to the extent of Rs.35,39,360/-, pursuant to the order of

attachment in Form DRC 13 dated 18th June, 2025, to be retained by the Bank as a security in connection with the above appeal and the same shall abide by the result of the appellate proceeding, I remand the entire matter to the appellate authority for the appellate authority to decide the aforesaid appeal from the refund sanction order dated 11th March, 2021 afresh, having regard to the disclosure made by the petitioner.

7. It shall be open to the appellate authority to test out the genuineness of the shipping/export bills and the certificate issued by the Superintendent of Customs, if necessary, by communicating with the concerned Customs authorities.
8. Consequentially, the order passed by the appellate authority dated 23rd February, 2023 stands set aside.
9. The subsequent order dated 9th March, 2024 passed under Section 73 of the said Act and the demand raised by the respondents in Form DRC 07 dated 11th March, 2024 shall, however, remain stayed and shall also abide by the outcome of the appeal
10. With the above observations and directions the writ petition is disposed of.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)

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**sb A.R.
(Court)**