

24.11.2025
Court No.551
Item No.16
sudipta

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

W.P.A. 20695 of 2025

**Vidya Trading Co. & Anr.
Vs.
Senior Joint Commissioner of State Tax Kolkata
North Circle & Ors.**

Mr. Anil Kumar Dugar

...for the petitioner

Mr. Tanoy Chakraborty

Ms. Sumita Shaw

Mr. Saptak Sanyal

..for the State

Mr. Rajesh Kumar Shah

..for the UOI

Ms. Manasi Mukherjee

Mr. Anurag Roy

..for the CGST authority

1. As prayed for, the Central GST Authorities may be added as parties to the writ petition. A copy of the writ petition may be served upon the added respondents within a week from date.
2. Mr. Anurag Roy who usually appears on behalf of the CGST authorities submits that he has instruction to appear in this matter. In such view of the matter service may be effected upon Mr. Roy.
3. Since notifications issued by the Central Board of Indirect Taxes and Customs and by the State Government have also been challenged in the writ

petition, a notice of this writ petition may also be served upon the learned Attorney General and the learned Advocate General.

4. The petitioners are aggrieved by an order dated March 12, 2025 passed by the Appellate Authority under Section 107 of the WBGST Act, 2017 / CGST Act, 2017 (hereafter the said Act of 2017) whereby the petitioners' appeal against the order dated December 27, 2023 passed under Section 73 of the said Act of 2017 has been dismissed.

5. Mr. Dugar, learned advocate appearing for the petitioners submits that the adjudicating proceeding itself is barred by limitation inasmuch as notification no. 9/2023-Central Tax dated March 31, 2023 issued by the Central Board of Indirect Taxes and Customs and notification no.599-F.T. dated April 12, 2023 issued by the Department of Finance, State of West Bengal, on the strength whereof the said proceeding has been initiated, have been issued in violation of the provisions of Section 168A of the said Act of 2017. It is submitted that the provisions of Section 168A of the said Act of 2017 can be invoked only in case of a *force majeure* situation and the said notifications have been issued without there being any *force majeure* situation. It is submitted that

since the condition precedent for invoking the provisions of Section 168A of the said Act of 2017 is absent, the said two notifications are ultra vires the provisions of Section 168A of the said Act of 2017 and should be quashed.

6. It is further submitted that the appellate order impugned in the writ petition is erroneous on various other grounds as well. Mr. Dugar further submits that although the order impugned herein is appealable under Section 112 of the said Act of 2017 yet since the Tribunal before which such appeal could be carried has not yet become confessional, therefore the petitioners have no avenue to assail the said order.
7. In view of the aforesaid facts, this writ petition is entertained.
8. Learned advocate appearing for the petitioners further submits that the respondent GST authorities have gone ahead and recovered the entire tax determined by the said authorities by order dated December 27, 2023 that was affirmed by the order impugned herein despite the fact that time to prefer appeal before the Appellate Tribunal is still there in terms of a notification dated September 17, 2025 issued by the Government of

India. It is submitted that in terms of the said notification, the petitioners would be entitled to file an appeal against the Appellate Authority's order passed under Section 107 of the said Act of 2017 till June 30, 2026 and that in such view of the matter the excess amount recovered should be refunded to the petitioners. In support of his submissions, he relies upon the following judgments.

i. AEW Technologies LLP Vs. Assistant Commisioner of Revenue, Bureau of Investigation reported in [2023] 154 taxmann.com 265 (Calcutta)

ii. Supreme Infotrade Private Limited & Anr. Vs. The Assistant Commissioner of State Tax, Refund Vertical, WBGST & Ors. in WPA 11681 of 2025 dated 06.08.2025

9. Having heard the learned counsel appearing for the respective parties and having considered the material on record, this Court is of the view that since an appellant before the first appellate authority under Section 107 of the said Act of 2017 is only required to put in a pre-deposit equivalent to 10 per cent of the tax in dispute in terms of Section 107(6) of the said Act of 2017 and an

appellant before the Tribunal is required to put in 10 per cent of the remaining amount of tax in dispute (in addition to the amount paid) under Section 107(6) of the said Act of 2017 in terms of the provisions of Section 112(8) of the said Act of 2017 and since upon aforesaid pre-deposits being made in terms of Sections 107(6) and 112(8) of the said Act of 2017, recovery proceedings for the balance amount is deemed to have been stayed, therefore the respondent GST authority could not have proceeded to recover the sum in excess of the cumulative sums (amounts) required to be deposited by an appellant before the said two authorities in terms of Section 107(6) and Section 112(8) of the said Act of 2017.

10. In such view of the matter the authorities shall refund to the petitioners any sum that they may have recovered in excess of the sum that was required to be deposited by the petitioners in terms of Section 107(6) and Section 112(8) of the said Act of 2017 by re-crediting the same to the petitioner no.1's electronic credit ledger within a period of two weeks from the date of communication of this order.

11. As prayed for by Mr. Chakraborty, let affidavit-of-opposition be filed within four weeks from date.

The petitioners shall be at liberty to file affidavit-in-reply, if any, within one week thereafter.

12. List this writ petition for hearing immediately after filing of the same.

(Om Narayan Rai, J.)