

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Ct.551 **13.01.26**

Item No.24 Sws.M

**WPA19648 of 2025
with
CAN 1 of 2025**

**M/s. Amar Iron Udyog Pvt. Ltd. & Anr.
Vs
Union of India & Ors.**

Mr. Arijit Chakraborty
Mr. Dyutimoy Paul
Mr. Akash Dutta
Mr. Prabir Bera
...for the petitioners

Mr. Kaushik Dey
Mr. Tapan Bhanja
....for the customs authority

Mr. Anjan Chakraborty
...for the Union of India
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal
...for the State

1. This writ petition has been filed against an order dated April 21, 2025 passed by the appellate authority under Section 107 of the WBGST Act, 2017/CGST Act, 2017 whereby the petitioners' appeal against an order dated April 30, 2024 passed under Section 73 of the said Act of 2017 has been dismissed.
2. Alleging, *inter alia*, short payment of output tax and excess availment of ITC on import of goods, a notice under Section 73 of the said Act of 2017 had been

issued to the petitioners calling upon the petitioners to show-cause as to why tax as indicated in the said notice along with up to date interest would not be charged on the petitioners and penalty shall not be payable by the petitioners due to their failure to pay appropriate tax and due to availment of excess Input Tax Credit (hereafter “ITC”) on import of goods by them.

3. The petitioners furnished a detailed reply to the notice to show-cause whereupon an adjudication order dated April 30, 2024 came to be passed. The adjudication order found the petitioners liable on several counts including excess availment of ITC on import of goods.
4. The adjudication order was carried in appeal before the appellate authority under Section 107 of the said Act of 2017. The appellate authority confirmed the adjudication order on all counts. The appellate order was, however, passed ex-parte.
5. Feeling aggrieved by the appellate order, the petitioners have filed the present writ petition.
6. Mr. Arijit Chakraborty, learned advocate appearing for the petitioners submits that although the order impugned has raised several issues, the petitioners' contentions are only confined to two issues i.e. availment of excess ITC on import of goods and liability of the petitioners to reverse ITC for the failure of the petitioners' suppliers to file returns.

7. Inviting the attention of this Court to the adjudication order, it is submitted that the adjudicating authority found the petitioners liable on account of excess availment of ITC on import of goods only on the ground that the petitioners failed to produce certified copies of payment of IGST from the customs department.
8. Mr. Arijit Chakraborty further submits that the appellate authority has failed to appreciate that the petitioners cannot be held liable to reverse ITC solely on account of failure on the part of the petitioners' suppliers to file their returns. It is further submitted that the appellate order was passed ex-parte since the petitioners missed the opportunity to appear before the appellate authority and the petitioners could not place their case before the appellate authority.
9. Mr. Tanoy Chakraborty, learned Advocate appearing for the State GST authorities, supports the order impugned.
10. Heard learned Advocates for the respective parties and considered the material on record.
11. Since the issue of excess availment of ITC on import of goods which is involved in the present case centered around payment of IGST and non-production of certified documents from the customs authority to evince such payment of IGST, this Court directed the customs authorities to file a report in the

form of an affidavit as regards the payment of duty along with IGST in respect of eight(8) bills of entry which were the subject matter of the adjudication proceedings.

12. Accordingly, a report in the form of Affidavit was filed before this Court on January 7, 2026. The relevant portion of Annexure B of the said Affidavit (at pages 9 and 10 thereof) is extracted below:

"It is further submitted that the said Bills of Entry were processed as manual Bills of Entry, and although clearance of the goods was allowed, the "Out of Charge" in respect of the said Bills of Entry was granted manually and was not contemporaneously entered or captured in the relevant data pertaining to grant of "Out of Charge" was not electronically Electronic Data Interchange (EDI) / ICES system. Consequently, the transmitted from ICES to the common GST Portal, resulting in non-reflection of the corresponding IGST amounts in the GST Portal.

It is submitted that the non-reflection of IGST in the GST Portal, therefore, did not arise on account of non-payment of IGST by the petitioner, but on account of the aforesaid procedural limitation arising from manual filing and processing of the Bills of Entry and the absence of system-recorded "Out of Charge" in ICES.

It is further submitted that, pursuant to the issue being noticed, this office has been actively coordinating with the petitioner and has requested submission of the requisite import documents necessary for post-facto grant of "Out of Charge" in the ICES system. Upon receipt and verification of such documents, "Out of Charge"

has already been successfully granted in the ICES system in respect of five (05) Bills of Entry and the post clearance data has also been entered in ICES System, details whereof are annexed hereto (Table - 1)."

13. On the same date i.e. on January 7, 2026 an additional report was also filed by the Customs Authorities (which is not by way of Affidavit) which states as follows:

"Now, it to submit that after receipt and verification of the documents, the necessary action has been taken for all the eight (08) manual bills of entry. And it has been confirmed by the petitioner i.e M/s Amar Iron Udyog that the details in respect of all the eight (08) manual bills of entry as listed below are being reflected in the GST Portal.

Sl No	Manual Bill of Entry Number	Date
1	107876	22.04.2019
2	110756	04.12.2019
3	112931	21.09.2020
4	106242	14.12.2018
5	103877	07.06.2018
6	110777	06.12.2019
7	110842	12.12.2019
8	110843	12.12.2019

14. Copies of the said reports have been handed up to learned Advocates appearing for the petitioners as well as the State GST authorities.

15. Since reports as aforesaid have been filed before this Court which throw sufficient light on the subject that fell for consideration before the adjudicating authority as well as the appellate authority, it would be proper

for this Court to send this matter back to the appellate authority for reconsideration thereof in the light of the aforesaid reports. The petitioners shall be at liberty to produce these reports before the appellate authority who shall then decide the matter in accordance with law.

16. In such view of the matter, insofar as the issue of excess availment of ITC on import goods is concerned, the observation made by the appellate authority is set aside. The matter is remanded to the appellate authority for the said authority to reconsider the said issue in the light of the reports filed by the customs authorities before this Court, which shall be produced by the petitioners before the appellate authority.

17. The appellate authority shall consider the aforesaid reports and then take appropriate independent decision in accordance with law.

18. Insofar as the second contention of the petitioners regarding reversal of ITC due to the failure of the petitioners' suppliers to file returns is concerned, although the petitioners could have been granted an opportunity to voice their case before the appellate authority for ends of justice without much ado, yet since the petitioners have not been able to satisfactorily explain as to why the petitioners missed the opportunity to represent their case before the appellate authority despite the same being granted,

therefore, the appellate authority's conclusion regarding reversal of ITC due to non-filing of returns of the suppliers shall only be permitted to be reconsidered by the said authority and the petitioners shall only be permitted to agitate their response on the said point before the appellate authority, if the petitioners pay costs to the tune of Rs.15,000/- (Rupees Fifteen Thousand Only) to the High Court Legal Services Committee, Calcutta within two weeks from date and furnish proof of such payment before the appellate authority and not otherwise.

19. It is clarified that this Court has not gone into the merits of the petitioners' case and the appellate authority shall take an independent decision in the matter, in accordance with law.

20. WPA 19648 of 2025 stands disposed of with the above observations. The connected application being CAN 1 of 2025 also stands disposed of accordingly.

21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)