22.04.2026
Sl. No. 11
Ct.3.
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 7957 of 2026

Middleton Leaseholders Private Limited & Anr.
Versus
The Deputy Commissioner of Revenue & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Ms. Tulika Roy,
... For the Petitioners.
Mr. Tanoy Chakraborty,
Mr. Saptak Sanyal,
.... For the State.

1. Citing extreme urgency, the matter was mentioned and has been listed upon notice.

2. Challenging the show cause notice dated 11th March, 2026 issued under Section 74 of the CGST/WBGST Act, 2017 (hereinafter referred to as "the said Act of 2017") in respect of Financial Year 2020-21 the instant writ petition has been filed.

3. Mr. Kanodia, learned advocate appearing in support of the writ petition has drawn the attention of this Court to an order dated 28th December 2023 passed under Section 73/74 of the said Act, 2017 for the Financial Year 2017-18 whereunder the proceeding against the petitioners stood dropped, since after issuance of show cause it came to the notice of the Proper Officer that the Deputy Commissioner of Revenue, Park Street Charge, initiated an adjudication proceeding in

respect of input tax reversal on account of claim of exempted supply (electricity and KMC charges) and the same culminated in the order dated 24th July, 2023.

4. This order was challenged in Appeal. By an order passed by the Appellate Authority under Section 107 of the said Act in form APL04 dated 16th July, 2024 arising out of order dated 24th July, 2023 the aforesaid claim has since been dropped by the Appellate Authority on merits.

5. To morefully appreciate the aforesaid order passed by the Appellate Authority relevant portion is extracted hereinbelow:

> *As regards GST on reimbursement of electricity and KMC charges from tenants, it was directed in the notice served by the Proper Officer that the appellant is required to reverse ITC on common credits proportionate to the portion of exempt supplies. The Appellant claimed that as there was no common credit in the amount of Exempt supply declared by him. In case of reimbursement of electricity charges from the tenants, no question of common credit arises as the Appellant used to reimburse the same amount from the tenant as charged by CES from them. In case of Property Tax also, the Appellant reimbursed the total amount of Tax from the tenants, which is charged on him by KMC and so in absence of common credit, no question of reversal of ITC arises.*
>
> *Now, upon consideration of the order passed by the Proper Officer, the following*

observation is made by the undersigned. As the order passed by the Proper Officer was an ex-parte order, it contains certain lacunae of factual or evidential support. There was no scope of verification upon which the final decision was taken and the order was passed u/s 73 of CGST/WBGST Act, 2017.The Proper Officer had to complete the order just on the basis of the return figures and due to which, the calculation sheet of Tax, Interest and Penalty was prepared on the basis of that. So, the undersigned thinks it justified to annul/reject the order of the Proper Officer. Thus, the demand of tax, Interest and Penalty due to reversal of IT against the portion of Exempted Supply made by the Proper Officer is not tenable.

For the demand of Interest amounting to Rs.8678.00 as CGST and Rs.8678.00 as SGST due to delay in submission of Returns, the Appellant raised no dispute and the payment of the same has already be made by the Appellant accordingly in course of his disposal of Appeal case.

Conclusion

*Hence, in the light of the above discussions, the undersigned finds it justified to '**ANNUL**' the order of the Proper Officer as per provision under sub-section (11) of Section 107 of the WBGST Act, 2017. The appeal petition is thus disposed of. FORM GST APL-04 is issued through GST common portal with the status of the Appeal Application in APL-01 as '**CONFIRMED**' therein.*

6. It is submitted that once the aforesaid issue has been conclusively decided, there was no question

on the part of the authorities once again to show cause the petitioners though in respect of a different Financial Year on the self-same ground. He also submits that the facts of this case do not make out ground for invocation of Section 74 of the said Act.

7. Mr. Sanyal, learned advocate appears for the respondents.

8. Having heard the learned advocates appearing for the respective parties and noting that the respondents have been taking inconsistent stand, for different tax periods/financial years, I am of the view, that the writ petition should be heard. However, at the same time since, a show cause notice has been issued, the petitioners should be permitted to respond to the same. Accordingly, in the event the petitioners file the response to the show cause within a period of ten days from date, the Proper Officer having regard to the observations made herein shall accept the response and upon giving opportunity of hearing to the petitioners shall decide the same as expeditiously as possible preferably within a period of four weeks from the date of providing personal hearing by placing a reasoned order.

9. It is made clear that order to be passed by the Proper Officer shall abide by the result of the writ petition and shall not be enforced without leave of the Court.

10. Liberty is granted to the parties to mention this matter for final hearing before the regular Bench after twelve weeks.

(Raja Basu Chowdhury, J.)