

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

**19.02.2026
Crt.04.
Sl. No.5
b.r.**

WPA 1743 OF 2024

Phuljhora Agro Plantation Pvt. Ltd. & Anr.

Vs.

The Union of India & Ors.

Mr. Himangshu Kumar Ray
Mr. Abhilash Mittal
Mr. Subhasis Podder

... For the Petitioners.

Mr. Dilip Kumar Agarwal, Ld. Sr. Standing Counsel.

1. Heard learned counsels appearing for the respective parties.
2. Affidavit-in-opposition filed in Court today, is taken on record.
3. Learned counsel appearing for the petitioner in the instant case challenges inter alia, the legality and the validity of the order dated 02.11.2023 passed ex parte under Section 74 of the GST Act by the respondent no.3 raising illegal demand of tax inclusive of penalty to the tune of Rs. 5,26,832/-.
4. Apropos the facts of the case is that a show cause-cum- demand notice dated 19.05.2023 has been issued by the respondent no.3 for the period from

July 27, 2017 to March 2019 pertaining to financial year 2017-2018 in contravention to the provision of Section 74 of the said Act.

5. Prior to the issuance of the show cause-cum-demand notice, no notices in Form GST ASMT-10 has ever been issued as per Section 61 of the said Act, nor any adjournment has been granted to the petitioners by the respondent authorities, which thereby runs contrary to Section 75(5) of the said Act.
6. The adjudicating authority has passed an order without giving an opportunity of hearing to the petitioners by serving any notice of hearing, which hits the principles of natural justice.
7. The Learned counsel appearing for the petitioners makes an assertive contention that the show cause notice has been uploaded erroneously in 'Additional Notices order tab' instead of 'view notices order tab' which de hors the provisions of the statute as contemplated under Section 169 of the said Act.
8. That the said show cause notice has never been served upon the petitioners either by registered post or by e-mail, the same has not been rebutted by the State authorities to substantiate with any documentary evidence to prove that the service of

the show cause notice has at all been effected upon the petitioners.

9. In this context, learned counsel for the petitioners relies upon two judgments of the Hon'ble Calcutta High Court, (1) ***In the matter of : St Xaviers College Calcutta Alumni Association –vs. Dy. Commissioner of Revenue CGST reported at (2025) 173 Taxmann.Com 417(Calcutta).***

Referring **Paragraph 5**, which is quoted below:

“ 5. As the intimation dated 18th May, 2023, Show Cause Notice dated 9th June, 2023 and the Order dated 12th July 2023 were all placed by the respondents on the GST portal in the “Additional Notices and Orders” tab and were not communicated properly to the petitioner through the normal mode of communication, the above intimation Show Cause Notice and Order dated 12th July, 2023 as quashed and set aside.”

- (2) ***In the matter of : Goutam Bhowmik –vs. State of West Bengal, reported at (2024) 158 Taxmann.Com 399(Calcutta).*** Referring to **Paragraphs 9 and 12**, which are quoted below:

“ (9) From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated

against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.”

“ 12. So far as the objection raised by learned Advocate for the respondents with regard to the availability of statutory remedy of the appeal under Section 107 of the WBGST/CGST Act, 2017 is concerned, we find that once the order has been passed by the proper officer in complete breach of statutory mandate contained in Section 75(4) of the WBGST Act, availability of alternative remedy on facts of the case would not be a complete bar while entertaining the writ petition under Article 226 of the Constitution of India.”

10. Mr. Dilip Kumar Agarwal, learned Senior Standing Counsel submits that the order passed is an appealable order, the same can be decided by the appellate authority.

11. It is further submitted that there is no violation of natural justice since the respondent no.3 has already granted three opportunities of personal hearing to the petitioners i.e. 09.07.2023, 11.09.2023 and 29.09.2023 to defend their case. The petitioners have failed to avail such opportunities without attending in person or by replying to the show cause-cum-demand notice dated 19.05.2023.

12. In conspectus of the above, I find that the petitioners have been able to make out a prima facie case. Upon being satisfied an interference is warranted, at this stage. From the records I find there is a reflection of gross technical and procedural irregularity.

13. It is mandatory upon the respondent authority to afford an opportunity of hearing to the petitioners by way of a reply to the show cause-cum- demand notice dated 19.05.2023. It is well settled proposition of law that an assessment order passed in haste, without considering the material evidence and reply, constitutes a gross violation of the principles of natural justice.

14. Having heard the parties on the basis of the available records I direct the petitioners to file a physical copy of the reply to the show cause-cum- demand notice dated 19.05.2023 before the respondent no. 3 within a period of 15 days and the same shall be duly considered by the respondent no. 3 preferably within a period of 3 months by passing a speaking order in accordance with law upon affording an opportunity of hearing either by virtually or physically before the final determination of the

tax liability. Such decision shall be communicated accordingly within a week thereafter.

15. It is made clear, that the notice of hearing shall be sent by all possible modes of service, namely, through registered post, by uploading in the portal and also by sending to the registered mail ID of the petitioners.

16. In view of the above, the order dated 02.11.2023 is hereby quashed and set aside.

17. The writ petition, **WPA 1743 of 2024** is accordingly **disposed of**, without going into the merits of the case.

18. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Smita Das De, J.)