

Court No. 2
11.9.2025
(Item No. 48)
(AB)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 1708 of 2025
+
CAN 1 of 2025

M/S. Budhu Sah & Company & Ors.
VS
The State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Meghana Joshi
Ms. Madhulika Sharma
Ms. Khushi Kundu
.... For the petitioners/applicants
Mr. Momenur Rahman
Ms. Rima Sarkar
.... For the State

In Re: **CAN 1 of 2025**

Affidavit of service filed in Court today is taken
on record.

This is an interlocutory application filed in the
parent writ petition praying for the following reliefs:

*“In the above facts and
circumstances, your petitioner humbly
prays that your Lordship would be
graciously pleased to grant an order of
stay in respect of the impugned
cancellation order dated 28.05.2025,
passed by the Assistant Commissioner of
Revenue, Coochbehar Charge,
Commercial Taxes, State GST, the
respondent no. 1 as well as the appellate
order dated 01.08.2025 passed by the
Appellate Authority, CGST and SGST,
Jalpaiguri and temporarily restore the
GST Registration of the petitioner till the
final disposal of the present writ petition*

being number 1708 of 2025 and/or pass such other or further incidental and/or consequential order or orders as to Your Lordship may deem fit and proper;”

Challenging the order of cancellation of registration effected on the basis of the show cause notice dated **April 30, 2025** which ultimately culminated in the appellate order dated **August 1, 2025**, writ petition was filed. The writ petition was entertained principally on the ground that the jurisdictional appellate Tribunal, which is otherwise the available statutory remedy to the petitioners, has not yet been constituted. The order was passed by a co-ordinate Bench in the writ petition on **August 18, 2025** directing to file and exchange affidavit in the writ petition. The order shows that, **no interim** order was passed. The order further shows that, as on date time to file affidavit-in-opposition has not been expired.

Mr. Dhiraj Lakhota, learned counsel appearing for the petitioners submits that, in view of the subsequent development which have taken place in the meanwhile, the petitioners have filed the instant application. In support of his submissions, learned counsel for the petitioners has placed reliance on the following paragraphs from the application, which are reproduced herein:

“4. The petitioner is constrained to file the present application seeking urgent and limited interim relief in light

of emergent circumstances affecting the petitioner's stock-in-trade and business.

5. *It is submitted that the petitioner is currently holding finished goods (FG) valued at over Rs.60,00,000/- (excluding GST) in its warehouse. These products are perishable items/market-sensitive in nature and are now facing rapid deterioration in quality and commercial value due to passage of time and inability to dispatch or sell the same owing to the impugned GST cancellation and resultant operational paralysis.*

A copy of the said stock details available in the petitioners premises is annexed herewith and marked as Annexure "A/2".

6. *It is respectfully submitted that unless immediate permission is granted to effect sale or clearance of these goods, they are likely to become commercially unviable or entirely unsellable, thereby causing irreparable financial loss to the petitioner. The deterioration has already begun, and any further delay will only worsen the situation."*

The statements made in the application, as quoted above, would demonstrate that, they are bold in character and no particulars have been pleaded. The statements are general averments.

The charges leading to cancellation of registration of GST against the petitioners were allegedly availing of ineligible ITC.

Be that as it may, these allegations are under investigation. Person from the petitioners' organization was arrested and has subsequently been enlarged on bail.

Mr. Momenur Rahman, learned advocate with Ms. Rima Sarkar, learned advocate appearing for the State submits that, the original prosecution has been initiated by the Central CGST authority and the investigation is being carried out by the said Central CGST authority. Upon being communicated the said fact the State GST authority has issued the show cause and consequently cancelled the GST registration. The Central CGST authority has not been impleaded in the writ petition.

After considering the submissions made on behalf of the parties and on perusal of the materials on record, it appears to this Court that, the initiator of the prosecution is the Central CGST authority and as a consequence of such initiation of prosecution the State authority has cancelled the GST registration. This is a legal consequence under the relevant law.

Therefore, until the issue pending with the Central CGST authority is settled in accordance with law, the State GST authority cannot take any step at this juncture, more so when Central CGST authority has not been impleaded in the writ petition.

In view of the above, foregoing reasons and discussions this Court is of the considered view that

no order can be passed on this application for the time being.

At this juncture, Mr. Lakhota, learned advocate appearing for the petitioners prays for leave to implead the Central CGST authority in the writ petition. Such leave is granted. The petitioners shall be at liberty to implead the Central GST authority in the writ petition by adding them in the cause title of the original writ petition by putting the signature of the learned advocate on record for the petitioners. A copy of the amended cause title shall be served upon Ms. Rima Sarkar, learned advocate appearing for the State. However, a complete set of amended writ petition shall be served upon the Central GST authority, to be impleaded. The petitioners shall then file affidavit of service when the matter shall be taken up next.

It is made clear that, this Court has not gone into the merits of the allegations and counter allegations of the parties and the merits of the writ petition in any manner.

Depending upon the fact situation, the petitioners shall be at liberty to renew its prayers made in this application at the appropriate stage, if the petitioners are found to be eligible to do so in accordance with law.

Since affidavits are not called for, the allegations made in this interlocutory application are

deemed not to have been admitted by the respondents.

With the above observations and directions, this application being **CAN 1 of 2025** stands **disposed of**, without any order as to costs.

(Aniruddha Roy, J.)