

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 20.01.2026
Item No.06 Sws.M

WPA 6739 of 2025

Chatterjee Concern, a Partnership Firm and Anr.
Vs
State of West Bengal & Ors.

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder
Mr. Sushant Bagaria
Mr. Gaurav Chakraborty
...for the petitioners

Mr. Swapan Kumar Dutta
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State

1. Affidavit of service as well as supplementary affidavit filed in Court today are taken on record.
2. Copy of the said supplementary affidavit has already been served upon the respondents/GST authorities.
3. This writ petition takes exception to an order dated May 9, 2024 passed by the appellate authority under Section 107 of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter 'the said Act of 2017') whereby the petitioners' appeal against an order dated March 25, 2023 passed under Section 73 of the said Act of 2017 has been dismissed ex-parte.
4. By the adjudication order dated March 25, 2023, the petitioner no. 1 (hereafter the petitioner) was

held liable on account of excess claim of ITC as well as interest and penalty. The petitioner carried the said matter in appeal before the appellate authority. The appellate authority fixed August 03, 2023 as the first date for hearing. On the said date the petitioner appeared through its authorized representative and prayed for an adjournment. Such adjournment was granted and October 05, 2023 was fixed as the next date. On the said date, the petitioner remained unrepresented. The petitioners have sought to explain the reason behind the failure of the petitioners to be represented before the appellate authority by way of a supplementary affidavit filed in Court today. From the supplementary affidavit it appears that the petitioners' tax consultant failed to appear on the appointed day inasmuch as he was seriously indisposed, being a patient of prostate cancer.

5. Since the petitioner remained unrepresented on the adjourned date, the appellate authority proceeded to pass an ex-parte order. It is noticed that such order was passed after about seven months from the adjourned date. Hence the present writ petition.
6. Mr. Ray, learned advocate appearing for the petitioners submits that the appellate order is

absolutely unsustainable. It is submitted that although the petitioner could not be represented on the second day (i.e. the day fixed upon accepting the petitioners' prayer for adjournment on the first day) yet, when the appellate authority did not dispose of the appeal on the said day or any day immediately thereafter, the appellate authority ought to have given the petitioner at least one more opportunity to present its case.

7. It is further submitted that the appellate authority has increased the amount of penalty from Rs.1,000/- (Rupees One thousand only) to Rs.10,000/- (Rupees Ten thousand only) without granting any opportunity of hearing to the petitioner on the said ground. It is submitted that the same is in the teeth of section 107(11) of the said Act of 2017.
8. Mr. Ray relies on a judgment of the Hon'ble Supreme Court in the case of **Rafiq and Another vs. Munshilal and Another**, reported at **(1981)2 SCC 788** in support of his contention that a litigant should not suffer for the fault of his Advocate.
9. Mr. Sanyal, learned advocate appearing for the respondents/GST authorities submits that the order impugned has been passed in accordance with law and the same calls for no interference.

10. Heard learned advocates appearing for the respective parties and considered the material on record.
11. It is evident that the appellate authority has not passed the order impugned on any date proximate to the date which was fixed for hearing upon granting adjournment to the petitioner.
12. From the supplementary affidavit and the documents annexed thereto it is evident that the tax consultant of the petitioners has been under medical supervision for prostate ailments and had also been admitted to the hospital for a few days in the beginning of the year 2023.
13. In such view of the matter, it may not be unreasonable to believe that such person missed to attend the appeal hearing fixed on October 05, 2023. That apart, when the appellate authority has increased the quantum of penalty, it was incumbent on the appellate authority to afford the petitioners a reasonable opportunity of showing cause against the proposed enhancement of penalty. It might well have been so that if such notice was given, the petitioners might have appeared and the case may not have been required to be proceeded with ex-parte. However such notice has not been given, in the case at hand. It is indeed a violation of the provisions of

the first proviso to section 107(11) of the said Act of 2017.

14. For all the reasons aforesaid the principles of natural justice do not appear to have been fairly complied with in the case at hand. Only on such score, the appellate order dated May 9, 2024 impugned herein stands set aside.
15. The matter is remanded to the file of the appellate authority for a fresh decision on merits. As requested by the petitioners it will be open to the petitioners to file additional reply before the appellate authority which, if filed, shall also be considered by the appellate authority while hearing the appeal.
16. It is clarified that this Court has not gone into the merits of the petitioners' case and all points are left open, to be decided by the appellate authority in accordance with law.
17. With the above observations, WPA 6739 of 2025 stands disposed of.
18. 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.)