Alternative Remedy before GSTAT to be Exhausted Despite Allegation that Adjudication Travelled Beyond SCN

The Hon'ble High Court at Calcutta in the case of ***RSH Amit Realty Development LLP & Anr. v. The Deputy Commissioner of Revenue, State Tax, Ballygunge Charge & Ors. [WPA 29673 of 2025 order dated April 27, 2026]*** held that where the assessee had already availed the appellate remedy under Section 107 of the CGST/WBGST Act and a further statutory remedy before the GST Appellate Tribunal **("GSTAT")** remained available, the writ court ought not to entertain the challenge even though the assessee alleged that the adjudication order under Section 73 travelled beyond the show cause notice and was therefore without jurisdiction.

Facts:

RSH Amit Realty Development LLP & Anr. **("the Petitioner")** challenged the appellate order dated December 9, 2025 passed under Section 107 of the WBGST/CGST Act, 2017, arising out of an adjudication order dated February 24, 2025 passed under Section 73 of the said Act.

The Deputy Commissioner of Revenue, State Tax, Ballygunge Charge & Ors. **("the Respondent")** had passed proceedings against the Petitioner under Section 73 of the CGST/WBGST Act and the appellate authority had affirmed the same under Section 107 of the Act.

The Petitioner contended that the determination made by the proper officer was beyond the show cause notice and, therefore, the adjudication order passed under Section 73 was without jurisdiction. It was argued that the High Court, in exercise of its writ jurisdiction, should entertain the petition despite availability of an alternative remedy.

The Respondent contended that the Petitioner had already availed the statutory appellate remedy and a further appellate remedy before the GST Appellate Tribunal was available. It was further submitted that although the Tribunal had been constituted, it was yet to commence hearing matters.

The grievance of the Petitioner was that the adjudication order travelled beyond the scope of the show cause notice and was therefore liable to be interfered within writ jurisdiction. Accordingly, the Petitioner approached the Hon'ble Calcutta High Court by way of a writ petition challenging the appellate order passed under Section 107 of the CGST/WBGST Act, 2017.

Issue:

Whether a writ petition challenging an order passed under Section 107 of the CGST/WBGST Act on the ground that the adjudication under Section 73 travelled beyond the show cause notice is maintainable?

Held:

The Hon'ble High Court at Calcutta in ***WPA 29673 of 2025*** held as under:

- Observed that, though the Petitioners claimed that the order passed under Section 73 of the Act was beyond the show cause notice, the Petitioners had already preferred an appeal and a decision had already been rendered by the appellate authority.

- Noted that, the Petitioners had a further appellate remedy before the Appellate Tribunal, though the Tribunal had not yet started hearing matters.

- Observed that, vide notification dated September 17, 2025, the time to file appeal under the provisions of the Act had been extended till June 30, 2026 in respect of orders communicated before April 1, 2026.

- Noted that, the statute had already been amended to reduce the burden on the assessee by reducing the pre-deposit requirement from 20% to 10% of the disputed tax amount.

- Held that, since an alternative remedy was available and the time to file appeal had not expired, it shall not be appropriate for this Court to enter into the issue raised in the petition at the first instance.
- Observed that, without going into the questions raised by the Petitioners and by leaving it open to the Petitioners to challenge the same before the Appellate Tribunal, the Court refused to entertain the writ petition.
- Directed that, in the event the Petitioners preferred an appeal within the prescribed period, the Respondents shall not recover the demand till expiry of the period for preferring the appeal having regard to Section 78 of the Act, unless recovery was considered expedient in the interest of Revenue upon recording reasons.

Our Comments:

The present judgment reiterates the settled principle that writ jurisdiction under Article 226 ordinarily ought not to be exercised where an efficacious alternative statutory remedy exists, particularly where the assessee has already availed one stage of appellate remedy and a further appeal lies before the GSTAT. In the case ***D. Justin Kumar v. The Assistant Commissioner of CGST and C.Excise, Tirunelveli Division [W.P.(MD) No. 5559 of 2025 and W.M.P.(MD)Nos.4051 and 4052 of 2025 order dated March 3, 2025]*** the Hon'ble Madras High Court, Madurai Bench had held that the petitioner, having an appeal remedy before the Joint Commissioner of CGST (Appeals), Madurai, under Section 107 of the GST Act, 2017, this writ petition is disposed of, with liberty to the petitioner to approach the appellate authority and raise all the grounds raised in this writ petition in the appeal.

Further the Notification S.O. 4220(E) dated September 17, 2025 extending limitation for filing appeals before the GSTAT till June 30, 2026 in respect of orders communicated prior to April 1, 2026.

Relevant Provisions:

Section 73 of the CGST Act, 2017

Determination of tax pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.-

"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest

payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable."

Section 107 of the CGST Act, 2017

"Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application."

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