IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Rajarshi Bharadwaj
And
The Hon'ble Justice Sudip Deb

FMA No. 1649 of 2025
With
CAN 1 of 2025

M/s. S N Chatterjee and Company
-Vs-
State of West Bengal & Ors.

For the Appellant	: Mr. Abhratosh Majumdar, Sr. Adv. Mr. Sayan Sinha Mr. Kausheyo Roy Mr. Gaurav Gupta
For the State	: Mrs. Manju Agarwal, Sr. Adv.
Heard on	: 14.10.2026
Judgment on	: 19.11.2026

Sudip Deb, J.:-

1. This intra-Court appeal arises out of an order dated 25th August, 2025 whereby the Learned Single Judge disposed of the writ petition, inter alia, directing that the order dated 24th April, 2024 passed by the Proper Officer should be treated as show-cause notice. By the said impugned order, the appellant was directed to respond to the said order dated 24th April, 2024 by treating the same as show-cause notice within a period of three weeks from

date. It was also clarified by the said impugned order that in the event the appellant responds to the show-cause within the aforesaid period or in the alternative fails to respond the show-cause, the Proper Officer, upon giving an opportunity of personal hearing to the appellant shall hear out and dispose of the aforesaid matter within a period of four weeks thereafter.

2. It was further clarified by the said impugned order that if the appellant does not respond to the show-cause within the period no further opportunity of filing response to the show-cause shall be required to be given to the appellant and in such case, the Proper Officer shall be obliged to decide the same in accordance with law within the aforesaid period.
3. Being aggrieved by the said order the instant appeal has been preferred by the appellant.
4. The learned senior counsel appearing for the appellant submitted that the order impugned is perverse inasmuch as the order of the Proper Officer could not be treated as show-cause notice and the same is contrary to the provisions of the Central Goods and Services Tax Act, 2017, which is hereinafter referred to as “the said Act”.
5. He further submitted that the figure mentioned in the show-cause notice and the final demand as contemplated under section 73 of the said Act are at variance as the demand made in the said adjudication order has exceeded the demand in the show-cause notice. It is also submitted that section 75(7) of the said Act creates a bar to make any demand in the adjudication order in excess of the amount specified in the show-cause notice. As such, it is argued that the impugned order should be set aside.

6. The learned counsel appearing for the State submitted that the State does not have any objection to treat the aforesaid order dated 24th April, 2024 as show-cause notice.

7. Heard the learned counsel appearing for the parties and perused the record.

8. The issues that fall for consideration are firstly, whether the order of the Proper Officer can be treated as show-cause notice or not. Secondly, whether demand in the order of the Proper Officer can exceed the demand in the show-cause notice or not.

9. In order to decide the aforesaid issues, it is important to ascertain the facts of the instant case, which are narrated hereinbelow:-

    a) The appellant during the period from April, 2018 to March, 2019 had regularly filed monthly returns of outward supplies in Form GSTR-1 under section 37 of the said Act, 2017 read with Rule 59 of the West Bengal Goods and Services Tax Rules, 2017 along with monthly return of self-assessment in Form GSTR-3B under section 39 read with Rule 61(5) and annual return/reconciliation statement in Form GSTR-9/GSTR-9C under section 44 of the said Act read with Rule 80 of the Rules.

    b) During the said period from April, 2018 to March, 2019 the appellant was awarded a work order dated 5th May, 2018 by M/s Eastern Coalfields Limited (hereinafter referred to as “ECL”) for loading of coal by payloader at MIC and transportation of coal from MIC to POCP-I siding, Jhanjra Project Colliery, Jhanjra area. The appellant completed the said work to the full satisfaction of ECL

and consequently ECL issued a completion certificate dated 20th January, 2020 in favour of the appellant.

c) The ECL also issued another work order dated 26th July, 2018 in favour of the appellant for transportation of sand from Pirthanghat, Ramnagarghat and Sidhaghat of Ajay River to Newkenda basjuri sand bunker of Kenda area.

d) According to the appellant the supply of "Transport of Goods by Road Services" falls under the category of "Goods Transport Agency Services" (GTA) classifiable under SAC 9967 chargeable to tax @ 5% (2.5% CGST + 2.5% SGST) and under Serial No. 1 of State Notification No. 1137-FT dated 28th June, 2017 read with Serial No. 11 of the State GST Rate Notification No. 1135-FT dated 28th June, 2017, issued by the Government of West Bengal, which is payable by the recipient under reverse charge mechanism.

e) In this regard ECL also issued a certificate dated 3rd May, 2021 bearing Ref. No. GM/KND/AFM/720 declaring that ECL had duly discharged the GST liability under reverse charge mechanism on transportation of sand executed by the appellant as inwards supply under GTA service. According to the appellant, it had also discharged tax liability at 18% on loading contract, i.e., the part of the contract that deals with that aspect of loading of coal and sand.

f) According to the appellant, Sl. 21(b) of the Notification No. 12/2017, Central Tax (Rate) dated 28th June, 2017 exempts

payment of GST where consideration charged for transportation of goods on a consignment transported in a single carriage does not exceed ₹1500/-. In this regard, ECL also issued a communication dated 30th April, 2021 bearing Ref. No. GM/AFM/20-21/1185 clarifying that no GST is charged/paid on RCM on such aforementioned transportation of coal within the specified condition.

g) Thereafter, the Assistant Commissioner of State Tax, Durgapur Charge, on 6th October, 2023 issued a notice in FORM GST ASMT-10 under section 61 of the said Act for the period April, 2018 to March, 2019 intimating the appellant of the discrepancies found in the return after scrutiny which ultimately triggered the demand and recovery proceedings in terms of section 73 of the said Act.

h) Although the appellant failed to submit a reply in FORM GST ASMT-11 in response to the aforementioned notice dated 6th October, 2023, however, during the scrutiny the appellant had duly submitted the requisite documents such as work orders, inward and outward supply details, tax invoices etc. manually before the Assistant Commissioner of State Tax, Durgapur Charge.

i) Thereafter, on 20th November, 2023 the Assistant Commissioner of State Tax, Durgapur Charge issued FORM GST DRC-01A to the appellant for the period April, 2018 to March, 2019 intimating the appellant that tax/interest/penalty to the tune of Rs.2,94,26,791.67/- under the head CGST and

Rs.2,94,26,791.67/- under the head SGST is payable by the appellant in terms of Section 73(5) of the said Act on the ground of the following discrepancies:-

a) The appellant allegedly claimed excess Input Tax Credit (ITC) as there was mismatch between ITC availed in GSTR-3B and GSTR-2A and import data from ICE GATE 2.

b) The appellant allegedly imposed a wrong rate of GST leading to short payment of tax.

By virtue of these, the appellant was directed to make full payment by 6th December, 2023.

j) Subsequently, on 26th December, 2023 the Deputy Commissioner of State Tax, Durgapur Charge, Directorate of Commercial Taxes, Government of West Bengal issued a show-cause notice to the appellant in FORM GST DRC-01 under Section 73 of the said Act for the period April, 2018 to March, 2019 on account of the aforesaid discrepancies in the returns for the aforesaid period. The appellant was also directed to submit a reply to the said show-cause notice by 30th January, 2024. The date of personal hearing of the aforementioned issues was scheduled on 10th January, 2024 at 2 p.m. at the office of the Deputy Commissioner of State Tax, Durgapur Charge, Directorate of Commercial Taxes, Government of West Bengal. Thereafter, on 1st January, 2024 the authorized representative of the appellant appeared before the Deputy

Commissioner of State Tax, Directorate of Commercial Taxes, Government of West Bengal and submitted that during financial year 2018-2019 outward taxable supply of the appellant was ₹2,24,91,726.89/- and the corresponding CGST was ₹20,24,255.42/- and SGST was ₹20,24,255.42/-. The appellant had paid the said tax amount within the stipulated time and the authorized representative of the appellant submitted a copy of GSTR-1 for the month of April, 2019 in support of his claim wherein the mentioned outward supply invoice number SNC/PL/18-19/26 dated 11th March, 2019 was reflected. He also produced statements and relating supporting invoices at the time of the personal hearing.

k) The appellant also on 31st January, 2024 submitted a reply in response to the show-cause notice issued in FORM GST DRC-01. Regarding issue number 1, the appellant stated that the appellant did not claim excess ITC in GSTR-3B. The appellant clarified that since a few suppliers had not seeded their tax invoice in their GSTR-1 so the difference in CGST of ₹47,485/- and SGST of ₹47,485/- occurred. The appellant being the recipient of the respective supplies is in possession of the tax invoice copies of those suppliers. Regarding issue number 2, the appellant submitted that during the financial year 2018-2019 outward taxable supply was ₹2,24,91,726.89/-, thus, CGST of

₹20,24,255.42/-, and SGST of ₹20,24,255.42/- had been paid by the appellant within the stipulated time.

l) As per the work order, the appellant paid all applicable GST liabilities as FCM. Therefore, according to the appellant the onus of the recipient of services to pay tax under RCM. In view of such, the appellant requested the Deputy Commissioner of State Tax, Durgapur Charge, Directorate of Commercial Taxes to drop the proceeding initiated under section 73 of the said Act.

m) Thereafter, on 18th April, 2024 FORM GST DRC-03 vide ARN AD190424013885W was issued to the appellant for payment of tax in terms of issue number 1 raised in the show-cause notice in FORM GST DRC-01. The appellant reversed the excess claim of ITC, i.e., CGST of Rs.93,731/- and SGST of Rs.93,731/- which is inclusive of interest at 18%.

n) The appellant, thereafter, on 19th April, 2024 appeared through its authorized representative before the said authority, namely, the Deputy Commissioner of State Tax, Durgapur Charge, Directorate of Commercial Taxes, Government of West Bengal and produced GST DRC-03 vide ARN AD190424013885W dated 18th April, 2024.

o) Thereafter, on 24th April, 2024 the said authority, namely, Deputy Commissioner of State Tax, Durgapur Charge, Directorate of Commercial Taxes, Government of West Bengal issued an order under section 73 of the said Act in GST DRC-07 for the period April, 2018 to March, 2019 raising the demand of payment of tax

along with interest and penalty, i.e., CGST of Rs.3,03,88,943/-, and SGST of Rs.3,03,88,943/- for the period April, 2018 to March, 2019.

p) It appears from the show-cause notice as well as the summary order of the Proper Officer that the figures mentioned in the show-cause notice are at variance with the figures mentioned in the order of the Proper Officer as the demand in the adjudication order exceeds the demand in the show-cause notice.

10. Being aggrieved by the aforesaid order of the Proper Officer, the appellant had filed the writ petition, inter alia, making the following prayers:-

a. Declaration that the appellant engaged in supply of "Goods Transport Service by Road" falling under the category of "Goods Transport Agency Services" classified under SAC 9967 under Serial No. 1 of Notification No. 1137-FT dated June 28th, 2017 read with Serial No. 11 of the State GST Rate Notification No.1135-FT dated 28th June, 2017 and the GST for the same at the rate 5% payable by the recipient of the service under the reverse charge mechanism.

b. Quash, rescind and/or cancel the impugned show-cause notice and summary of show-cause notice dated 26th December, 2023 and the impugned order dated 24th April, 2024 for the period between April, 2018 – March, 2019.

11. As stated hereinabove, the Learned Single Judge had disposed of the writ petition directing the order of the Proper Officer to treat it as show-cause

notice for the petitioner to respond the same. While doing so, the Learned Single Judge had taken into consideration that ordinarily a demand under section 73(9) of the said Act can only be confirmed provided a demand cum show-cause in this regard be made under section 73(2) of the said Act having regard to the provisions of section 75(7) of the said Act as also that penalty had been enhanced without informing the petitioner. Based on these, the Learned Single Judge came to the conclusion that the order of the Proper Officer dated 24th April, 2024 should be treated as show-cause notice for the petitioner to respond to the same. The Learned Single Judge by this impugned order fixed a timeframe for the petitioner to respond to the show-cause notice and other consequential directions had also been given.

12. As stated hereinabove, the principal question that arises for consideration is whether the Learned Single Judge was justified in directing that the adjudication order passed by the Proper Officer be treated as a show-cause notice.

13. Undoubtedly, the order of the Proper Officer is an order of a quasi-judicial authority. The order of a quasi-judicial authority cannot be treated as show-cause notice as the same is final or substantive adjudication. It is the result of a proceeding where the authority has applied his mind to the facts and the law, recorded reasons and determined the rights of the parties, liabilities or penalties. Show-cause notice is the initiation of a proceeding based on which Proper Officer being a quasi-judicial authority proceeded and came to its finding. A show-cause notice initiates the adjudicatory process by informing the noticee of the allegations and the proposed demand, thereby affording an

opportunity to respond thereto. An adjudication order, on the other hand, is the culmination of such process, whereby the competent authority upon consideration of the material facts and submissions of the parties determines the liability, if any, of the noticee. The two instruments are, therefore, distinct in their nature, purpose and legal effect. An adjudication order, therefore, cannot be converted to a show-cause notice.

14. Therefore, we are of considered view that the finding of the Learned Single Judge by directing to treat the order of the Proper Officer as show-cause notice cannot be sustained in law and is accordingly set aside.

15. The next question that falls for consideration is whether the Proper Officer was competent to confirm a demand in excess of the amount specified in the show-cause notice.

16. Section 75(7) of the said Act expressly provides that the amount of tax, interest and penalty demanded in the adjudication order shall not exceed the amount specified in the notice. The provision further stipulates that no demand shall be confirmed on grounds other than those specified in the notice.

17. Section 75(7) of the said Act is quoted hereinbelow:-

> ***"75. General provisions relating to determination of tax.*** *- ...*
>
> *xxx*
>
> *(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."*

18. In the present case, it appears from the material on record that the amount specified in the show-cause notice and the amount confirmed by the Proper Officer are at variance. The show-cause notice, as stated hereinabove, quantified the proposed liability at ₹2,94,26,791.67/- under each of the heads of CGST and SGST, whereas the adjudication order dated 24th April, 2024 confirmed a demand of ₹3,03,88,943/- under each of the said heads.

19. Therefore, the Proper Officer had acted contrary to the aforesaid provision of law while making excess demand in the adjudication order. It would be impermissible for an authority to confirm a demand in excess of the amount specified in the show-cause notice in view of the express bar contained in section 75(7) of the said Act.

20. In view of such, we are also of the considered view that the order of the Proper Officer dated 24th April, 2024 is not sustainable in law and accordingly, we set aside the same.

21. We make it clear that the adjudication order is set aside solely on the ground that the demand confirmed therein exceeds the amount specified in the show-cause notice in contravention of section 75(7) of the said Act. We have not expressed any opinion on the merits of the allegations contained in the show-cause notice or on the substantive tax liability of the appellant. We also make it clear that though the adjudication order of the Proper Officer is set aside but that does not invalidate the show-cause notice. The respondents shall, however, be at liberty to proceed further strictly in accordance with law subject to the statutory limitations and observations

made hereinabove. The instant appeal is allowed to the extent as indicated hereinabove. CAN No. 1 of 2025 is also disposed of accordingly.

22. There shall be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Rajarshi Bharadwaj, J.) **(Sudip Deb, J.)**