

12.06.2025
Sayandeep/sb
Sl. No. 06
Ct. No. 05

WPA 9957 of 2025

Kamdhenu Udyog P Ltd. & anr.
Vs.

The Deputy Commissioner of Revenue, Bhabanipur
Charge & ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
Ms. Tulika Roy

..... for the petitioners

Mr. Anirban Ray, Ld. GP
Mr. T. M. Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Shaw

..... for the State

1. Challenging the order dated 21st March, 2025 issued under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) as also the order dated 27th December, 2023 passed by the proper officer under Section 73 of the said Act for the tax period of July, 2017 to March 2018, the instant writ petition has been filed.
2. The petitioners' case proceeds on the premise that the petitioners are engaged in business of manufacturer of poultry feed under CTH of the Customs Tariff Act, 1985 (hereinafter referred to as the Tariff Act). Following a scrutiny of the returns of the petitioners under Section 61 of the said Act, a notice in form GST ASMT 10 dated 21st July, 2022 was issued identifying certain discrepancies. The petitioners had duly responded by the same by filing a response in form GST ASMT 11 and had clarified therein that although, the petitioners had wrongly availed the input tax credit (ITC) by filing returns under Section 39, however, pursuant to the

directives issued by the anti evasion wing of the CGST authorities, the petitioners had reversed the ITC wrongly availed by filing form GST DRC 03 as per particulars which are provided in a chart annexed to the writ petition at page 85.

3. Although, according to the petitioners, consequent upon reversal of the unutilized ITC no further anomaly remained outstanding as the same stood resolved and though such fact was brought to the notice of the respondents, however, by ignoring the same not only a pre show-cause notice but a show-cause notice was issued on the petitioners. Ultimately, the same culminated in the order dated 27th December, 2023 passed under Section 73 of the said Act. Although, the petitioners had preferred an appeal from the aforesaid order, the appellate authority by order dated 21st March, 2025 had refused to accept the contention of the petitioners that the voluntary reversal of ITC through form DRC 03 also included the period 2017-18 and had rejected the appeal by, *inter alia*, observing that he agrees with the observations made by the proper officer.

4. Mr. Kanodia, learned advocate representing the petitioners by drawing attention of this Court to the chart enclosed to the writ petition showing particulars of the reversal of the ITC would submit that although, the reversal was intended for the tax period of 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022, however, due to inadvertence, the entire reversal though effected, was shown in respect of the tax period 2018-2019, 2019-2020 and 2021-2022. According to him, since the sale of poultry feed by the petitioners does not

attract levy of tax, the petitioners could not have either availed or utilized ITC.

5. Admittedly, the petitioners have never utilized the ITC which had been wrongly availed by the petitioners while filing its returns under Section 39 of the said Act. When the aforesaid discrepancy came to light with the intervention of the anti evasion wing of the CGST authorities, the petitioners had forthwith reversed the ITC. Though while doing so, the petitioners did not indicate in the DRC 03 forms that the reversal was also in respect of the financial year 2017-2018.
6. According to him, both the proper officer (adjudicating authority) and the appellate authority are aware of the situation. However, since according to the adjudicating authority and the appellate authority the consolidation of reversal of ITC for the five financial years in a single financial year cannot be accepted, the same had been disallowed. In the facts noted hereinabove, he submits that the above order cannot be sustained and should be set aside and remanded back to the proper officer.
7. Mr. Siddiqui, learned senior advocate and Additional Government Pleader representing the State would submit that admittedly in this case the petitioners had wrongly availed ITC, at the same time, he also acknowledges the fact that though the petitioners had wrongly availed ITC, however, the petitioners had voluntarily by filing Form GST DRC 03 reversed the same.
8. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I prima facie find that this is not a case of evasion of tax but a case of wrongful availment of ITC by the petitioners which had

later voluntarily been reversed by the petitioners by filing Form GST DRC 03, though in the aforesaid process there had been inadvertent error on the part of the petitioners in not selecting the relevant tax period for which such reversal was made in the respective DRC 03 forms. However, the fact that the reversal of the entirety of ITC was effected cannot be overlooked. I find that though the proper officer (adjudicating authority) as also the appellate authority has acknowledged such aspect and despite observing that the ITC had been reversed voluntarily by the petitioners by filing Form GST DRC 03, the benefit thereof has not been extended to the petitioners citing technical grounds. As rightly pointed out by Mr. Kanodia, by placing reliance on the judgment delivered in the case of ***Rajesh Real Estate Developers Private Limited vs. Union of India***, reported in **2024 (16) Centax 156, (Bom.)**, that the inadvertent error in Form GST DRC 03 can be permitted to be corrected. Similar view has also been taken by the High Court of Kerala at Ernakulam in the case of ***Lotus Pharmaceuticals vs. the Assistant State Tax Officers & Ors.***, reported in **TS 154 HC(KER) 2025-GST**, as also by this Court in the case of ***Nivriya India Private Limited vs. Assistant Commissioner of State Tax***, reported in **2024 (23) Centax 315 (Cal)**.

9. Having regard thereto, I am of the view that the orders passed both by the proper officer (adjudicating authority) as also by the appellate authority dated 27th December, 2023 and 21st March, 2025 respectively, cannot be sustained and the same are accordingly, set aside and the matter is remanded back to the proper officer for adjudication having regard to the observations made hereinabove.

10. As a sequel thereto, the recovery notice issued under Section 79 of the said Act, dated 5th June, 2025 stands quashed.
11. It is expected that the adjudication shall be completed within a period of sixteen weeks from the date of communication of this order, in accordance with law.
12. With the above observations and directions the writ petition is disposed of.
13. All parties including the proper officer under Section 73 of the said Act are directed to act on the basis of the server copy of this order duly downloaded from the official website of this Hon'ble Court.
14. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)