

Order set aside for
initiation of fresh proceedings

N.22Sl

WPA 9951 of 2025

151/CL
21.01.26
SI-12
Ct.551
(S.R.)

M/s. Duakem Pharma Pvt. Ltd. & Anr.

v.

**The Deputy Commissioner of Revenue, Strand Road,
Chinabazar and Rajakatra Charge & Ors.**

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
Ms. Tulika Roy ... for the petitioner.

Mr. Tanoy Chakraborty
Mr. Saptak Sanyal ... for the State.

1. This writ petition has been filed against an adjudication order dated February 24, 2025 passed under Section 74 of the Central Goods and Services Act, 2017/ West Bengal Goods and Service Tax Act, 2017 (hereafter the said Act of 2017).
2. A notice dated November 11, 2024 under Section 73(1) of the said Act of 2017 had been issued to the petitioner no. 1 (hereafter "the petitioner") calling upon the petitioner to show cause as to why should the petitioner not be held liable for payment of tax, *inter alia*, on the ground that Income Tax Credit (ITC) that was found reversible in proportion to exempt supply to the tune of Rs.23,12,870/- towards IGST and Rs.3,79,210.65/- each under CGST and SGST.
3. The petitioner furnished its reply to the notice to show cause thereby asserting that it was not liable to reverse any ITC.

4. On February 24, 2025, the Proper Officer passed the impugned adjudication order thereby observing that the invoices of the product dealt in by the petitioners did not establish that the said product fell within the exempted category.
5. To be precise, the adjudicating authority held as follows: -

*“The invoices of DCP produced by the instant RP do not establish that the DCP supplied by him was of **animal feed grade conforming to IS specification No.5470: 2002**. Hence his claim of outward supply of Dicalcium phosphate (DCP) as exempted supply under the HSN-2309 is not acceptable and liable to tax @ 9% each under CGST and SGST or @ 18% under IGST Act. The RP, in his statement, has declared total outward supply of Dicalcium phosphate (DCP amounting to Rs.99,25,000.00 as exempted supply. Hence the RP is liable to pay tax Rs.8,93,250.00 each under CGST and SGST Act along with applicable interest amounting to Rs.692849.00 each under CGST and SGST u/s 50(1) of the Act.”*

RP's exempt supply accepted to the extent of Rs. 1,36,60,490.00 - 99,25,000)= Rs. 37,35,490.00 . The RP has declared self-assessed common credit as Rs. 24961.78 each under CGST and SGST.

RP's total turnover is Rs.4,45,86,532.50. Therefore, exempt turnover to total turnover stands 8.4%. Hence the RP is liable to reverse input tax credit Rs.2097.00 each under CGST and SGST Act along applicable interest amounting to Rs. 1640.00 each under CGST and SGST Act u/s 50(3) of the Act.”

The petitioners have assailed the said order by way

of the instant writ petition.

6. Ms. Agarwal, learned advocate appearing for the petitioners submits that the order impugned has been passed in total violation of the provisions of section 75(7) of the said Act of 2017 inasmuch as the Proper Officer has held against the petitioners on a ground that was never put across the petitioners and that the petitioners never had any opportunity to meet.
7. She has taken the Court through the notice to show cause to demonstrate that the only ground (relevant for the purpose of present writ petition) taken in the notice to show cause was that *"ITC that was found reversible in proportion to exempt supply, if any"*. It is submitted that the question as to whether the goods dealt in by the petitioners fell under the exempted category or not was neither posed to the petitioners nor was the same a point of consideration. It is submitted that despite the situation being such as aforesaid, the Proper Officer has proceeded to hold against the petitioner by deciding that Dicalcium phosphate (DCP), a product that the petitioners were dealing in, did not qualify for being treated as a goods under exempted category.
8. Ms. Agarwal also relies on an order dated April 10, 2025 passed by a Co-ordinate Bench of this Court

in the petitioner's own case being WPA 18295 of 2024 and submits that in an exactly similar situation, this Court had set aside the adjudication order impugned therein.

9. Mr. Chakraborty, learned Advocate appearing for the respondent State Authorities submits that the show-cause notice clearly indicated that the matter related to reversal of ITC in proportion to exempt supply. It is submitted that the said point clearly includes the question as to whether the petitioners had purchased exempted goods and sold the same as exempted outward supplies and, as such, there has been no change of ground. He submits that the order impugned does not call for any interference.

10. Heard learned advocates appearing for the respective parties and considered the materials on record.

11. The notice to show cause that had been issued to the petitioners stated as follows: -

“Point 4(E): IT found reversible in proportion to exempt supply, if any:

Discrepancy: ITC is found reversible in proportion to exempt supply to the tune of Rs. 2312870.00 under IGST and Rs. 379210.65 each under CGST and SGST Act.

RP's reply: RP claims that his exempted turnover is Rs. 1,36,40,490.00 and not Rs.2,56,57,860.00 Rs. 1,19,97,370.00 was wrongly declared under 0% taxable supply in GSTR-1. He also claims he has

purchased exempted goods and sells the same goods, so no question of reversal of ITC arises.

Observation: *The RP failed to establish with valid documents that why the provisions section 17(2) of the CGST/SGST Act will not be applicable for the entire credit availed. The RP is required to furnish the inward and outward statement of exempted supply supported by relevant invoices, transport documents, payment details etc. The RP is also required to furnish the documentary evidence of wrong declaration of 0% taxable supply in GSTR-1.*

Hence, this point of discrepancy remains unreconciled.”

12. A perusal thereof would reveal that the question as to whether the products/items dealt in by the petitioners fell under exempted category or not was never put to the petitioner and accordingly could never have been answered by the petitioner. Consequently, the said issue could also not have fallen for consideration before the adjudicating authority. In fact what was under consideration before the adjudicating authority was as to whether the petitioners were required to reverse ITC on the ground that the exempted turnover that the petitioners claimed was more than what was projected by the petitioners.
13. The adjudication order impugned has in the process practically held that the product that was (is) dealt in by the petitioner does not fall under the exempted category and held the petitioner liable for

reversal of ITC on that ground. This aspect was clearly not in issue insofar as the notice to show cause is concerned. If it was indeed an issue, a notice to show cause clearly indicating that point ought to have been issued to the petitioners. It is now well-settled that a notice to show cause should clearly specify all the charges/grounds that the noticee is required to meet and answer.

14. It is this very idea which has been encapsulated in the provisions of Section 75(7) of the said Act of 2017. Since the adjudication order has proceeded on a basis absolutely different than the one indicated in the notice to show cause, the same falls foul of the provisions of Section 75(7) of the said Act of 2017. Accordingly, the order impugned dated February 24, 2025 stands set aside.
15. This order shall, however, not prevent the respondents from initiating fresh proceedings, in accordance with law. It is noticed that earlier too, the writ petitioners had to knock the doors of this Court by filing WPA 18295 of 2024 raising an almost similar issue. WPA 18295 of 2025 was disposed of by an order dated April 10, 2025 thereby setting aside the order impugned and leaving the respondents free to initiate fresh proceeding on the basis of their assertion as available in the order impugned before this Court,

in accordance with law, while holding that the period from the date of the order impugned till the date of disposal of the writ petition and/or obtaining certified copy thereof, whichever is later shall stand excluded in computing the period of limitation for initiation of any proceeding against the petitioners. This Court also follows suit. It is therefore held that the period from the date of the order impugned i.e. from February 24, 2025 till the date of disposal of the writ petition i.e. January 21, 2026, or the date of receipt of certified copy of this order, whichever is later shall stand excluded while computing the period of limitation for initiation of any proceeding against the petitioners on the basis of the observations made in the impugned adjudication order.

16. With the aforesaid observations, WPA 9951 of 2025 stands disposed of. No costs.
17. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)