

05.03.2025
Item No.
AD 1
Ssi
Ct.5

WPA 21120 of 2021

**Prabir Kumar Das
versus
Assistant Commissioner of State Tax,
Bureau of Investigation (North Bengal) Raiganj
Zone & Ors.**

Mr. Himangshu Kumar Ray
Mr. Subhasis Podder

...For the petitioner

Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Nilotpal Chatterjee
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...For the State

1. Challenging the order passed under Section 73 of the WSBGST /CGST 2017 (hereinafter referred to as the “said Act”) for the tax period from September 2018 to March 2019, whereby the ITC claimed by the petitioner on the basis of the returns filed under Section 39 of the said Act in Form GSTR 3B beyond the due date, had been disallowed, the instant writ petition has been filed.

2. Mr. Ray, learned advocate appearing for the petitioner by drawing attention of this Court to the West Bengal Goods and Services Tax (Amendment) Act, 2024 which has been notified in the Kolkata Gazette on 10th January 2025, would submit that sub-Section (5) to Section 16 of the said Act has been inserted with effect from 1st July 2017, whereby the penal effect contained in sub-Section (4) of Section 16

of the said Act in respect of invoices or debit note for supply of goods or services or both pertaining to the financial years 2017-18, 2018-19, 2019-20 and 2020-21 has been withdrawn, by extending the cut off date for filing of returns upto 30th November 2021.

3. By drawing attention of this Court to the order dated 20th February, 2024 passed under Section 73 of the said Act disclosed by a supplementary affidavit which has been filed in Court today and has been taken on record, he submits that the claim for ITC of the petitioner has been turned down as per Section 16(4) of the said Act. He submits that from the aforesaid order, it would transpire that the returns filed in Form GSTR 3B was filed within the extended cut of date as provided for in Section 16(5) of the said Act. It is submitted that to give effect to the aforesaid provision, the Central Board of Indirect Taxes and Customs, GST Policy Wing by circular dated 15th October, 2024 has permitted the registered tax payers to file appropriate rectification application along with proforma in Annexure – A to the notification dated 8th October, 2024 as such he seeks leave to apply for availing the benefit of the amended provision.

4. Mr. Chakraborty, learned Advocate appearing for the State acknowledges the above. He, however, submits that it is only on the basis of an appropriate

application to be filed electronically that the petitioner's case for rectification can be considered.

5. Having heard the learned advocates appearing for the respective parties and noting that in this case, the ITC had been disallowed by reasons of the petitioner filing the return in Form GSTR 3B beyond the due date, and on the basis of insertion of sub-section (5) to Section 16, the returns filed by the petitioner which are in respect of the tax period from September 2018 to March 2019 have now been regularized having regard to the new cut of date provided for in Section 16(5) of the said Act, I am of the view that the petitioner cannot be denied the benefit of the aforesaid amendment.

6. Having regard thereto, I permit the petitioner to apply before the appropriate authority by making appropriate rectification application.

7. With the aforesaid observations and directions, the writ petition being WPA 21120 of 2021 is accordingly disposed of.

(Raja Basu Chowdhury, J.)