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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2980 of 2025

DYS Impex Private Limited
Versus
Assistant Commissioner of Revenue, State Tax,
Refund Unit & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
Mr. Akash Chakraborty
... For the petitioner.

Mr. Anriban Ray, GP
Md. T. M. Siddiqui, AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu
... For the State.

1. Affidavit of service filed in Court today is taken on record.
2. Challenging the order dated 21st February, 2024 rejecting the appeal filed by the petitioner from a challenge to a partial refund rejection order issued in Form GST RFT-06 for the tax period July, 2019 to September, 2019 dated 14th April, 2023 on the ground that consequent upon insertion of Section 16(5) in the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act"), the petitioner is entitled to the benefit of delayed filing of return on account of its claim for input tax credit for the period upto 2021, provided such return has been filed on or before 30th November, 2021, the instant writ petition has been filed.

3. Records would reveal that the appellate authority by proceeding on the premise that the petitioner had claimed the input tax credit on its inward supply in September, 2019 in respect of the financial year 2017-18 had proceeded to disallow the claim for refund having regard to the provisions contained in proviso to Section 16(4) of the said Act.
4. Having heard the learned advocates appearing for the respective parties it transpires that both the proper officer as well as the Appellate Authority has disallowed refund partially by relying on the proviso to Section 16(4) of the said Act. The scope of application of Section 16(4) of the said Act has since stood altered to a great extent especially having regard to Section 16(5) being inserted retrospectively with effect from 1st July, 2017. Consequent upon the insertion of Section 16(5) in the said Act, the time for filing of return under Section 39 of the said Act for the tax period 2017-18, 2018-19, 2019-20 and 2020-21 has been extended till 30th November, 2021. To morefully appreciate the above both the aforesaid provisions are extracted hereinbelow:

“16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [thirtieth day of November] following the end of financial year to which such invoice or [* *

**] debit note pertains or furnishing of the relevant annual return, whichever is earlier:*

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or [* *] debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

[16(5)] *Notwithstanding anything contained in sub-section (4), in respect of an invoice 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, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.]”*

5. Having regard to the above, I am of the view that the aforesaid orders issued both by the proper officer and appellate authority cannot be sustained and the matter is remanded back to the proper officer for re-adjudication of the issue having regard to the insertion of Section 16(5) of the said Act in the statute book with retrospective effect from 1st July, 2017.

6. Accordingly, the orders passed by the appellate

authority on 21st February, 2024 and the proper officer on 14th April, 2023 are set aside.

7. The proper officer is directed to hear out and conclude the aforesaid proceedings in accordance with law, as expeditiously as possible, preferably within a period of 12 weeks from the date of communication of this order.
8. With the above observations and directions the writ petition stands disposed of.

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.)