

10.09.2024  
Item No.  
ML 171  
Saswata

**W.P.A. 20453 of 2024**

**M/s Suburban Industrial Works Pvt. Ltd.  
versus  
The Assistant Commissioner, Bhowanipur Division,  
CGST & CX, Kolkata South Commissionerate & Ors.**

Ms. Aritra Chakraborty

...For the petitioner

Mr. Koushik Dey

Mr. Tapan Bhanja

...For the CGST

Mr. Srijib Chakraborty

Mr. Sachit Takukdar

...For the respondent no. 3

1. Challenging the order dated 26<sup>th</sup> April 2024 passed by the proper officer under Section 73(9) of the WBGST / CGST Act, 2017 (hereinafter referred to as the "said Act"), the instant writ petition has been filed.

2. Ms. Chakraborty, learned advocate appearing for the petitioner by drawing attention of this Court to the provisions of sub-Section (5) of Section 16 of the CGST Act, 2017 which has been inserted in the CGST Act, 2017 vide notification dated 16<sup>th</sup> August 2024 with effect from 1<sup>st</sup> July, 2017, would submit that consequent upon insertion of the said sub-section, the effect of sub-Section (4) stands diluted to a great extent since as per the aforesaid sub-section, 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 2017-2018, 2018-2019, 2019-2020 and 2020-2021, 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.

3. According to Ms. Chakraborty the entire show cause notice proceeds on the premise of the default committed by the petitioner in relation to the filing of returns beyond the prescribed period. By referring to the order passed by the proper officer dated 26<sup>th</sup> April 2024 she submits that in the instant case, the actual date of filing returns is 12<sup>th</sup> February 2020 and as such the petitioner is entitled to the benefit of insertion of sub-Section (5) to Section 16 of the CGST Act, 2017.

4. Having regard to the above, it is submitted that the aforesaid order passed by the proper officer can no longer be sustained and should be set aside.

5. Mr. Dey, learned advocate appearing for the CGST authorities submit that although the CGST Act, 2017 has been amended, the WBGST Act, 2017 is yet to be amended. Since, the order impugned pertains not only to demand on account of CGST but also WBGST, at this stage he prays for an accommodation to take appropriate instructions in this matter.

6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record and taking note of the provisions contained in Section 16(5) of the CGST Act, 2017 which has been inserted vide notification dated 16<sup>th</sup> August 2024, I am of the view that the present writ petition is required to be heard.

7. Since, the petitioner has been able to make out a prima facie case, the order dated 26<sup>th</sup> April 2024 for the tax period 2018-19 forming subject matter of challenge in the

instant writ petition, shall remain stayed till the next date of hearing.

8. List this matter under the same heading in the **combined monthly list of December 2024**.

9. All parties shall on the basis of the server copy of this order duly downloaded from this Court's official website.

***(Raja Basu Chowdhury, J.)***