

GAHC010175622022



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5725/2022

M/S MCLEOD RUSSEL INDIA LIMITED
A PUBLIC LTD. COMPANY INCORPORATED UNDER THE PROVISIONS OF
THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT DIRAI
TEA ESTATE, P.O. MORAN, DIBRUGARH, ASSAM-785669 AND IN THE
PRESENT PROCEEDINGS REPRESENTED BY SRI TRIDIB MAJUMDAR, THE
DEPUTY GENERAL MANAGER- TAXATION OF THE PETITIONER
COMPANY.

VERSUS

UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF FINANCE AND TAXATION
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006.

3:THE COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
CENTRAL GST HQRS.
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACKHOWA
GUWAHATI-781001.

4:THE COMMISSIONER OF STATE TAXES
ASSAM
KAR BHAWAN
GANESHGURI
GUWAHATI-781006

For the petitioner : Mr. A. Kanodia, Advocate
For the respondents : Mr. H. Baruah, Advocate for
Respondent Nos.2 & 4
Mr. S.C. Keyal, S.C., GST for
Respondent No.3

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

27-02-2025

(Vijay Bishnoi, C.J.)

By this writ petition, the petitioner has challenged the validity of Section 16(2)(aa) of the Central Goods and Services Tax (hereinafter to be referred as 'CGST') Act, 2017/Assam Goods and Services Tax (hereinafter to be referred as 'AGST') Act, 2017 as well as the validity of Section 16(2)(c) of the said Acts. The petitioner has also challenged the validity of sub-Rule 4 of Rule 36 of the CGST/AGST Rules, 2017.

Learned counsel for the petitioner has frankly submitted that since the validity of sub-Rule 4 of Rule 36 of the CGST/AGST Rules, 2017 has already been upheld by this Court in WP(C) 4787/2024, decided on 25.02.2025, and therefore, he is not pressing the said prayer.

Learned counsel for the petitioner has further submitted that so far as the

validity of Section 16(2)(c) of the CGST Act/AGST Act is concerned, this Court in WP(C) 2863/2022, decided on 05.08.2024, while relying on the decision of the Delhi High Court in ***On Quest Merchandising India Private Limited vs. Government of NCT of Delhi & Ors.***, reported in ***2017 SCC OnLine Del 11286*** has already held that Section 16(2) has to be read down and in the event the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the defaulting selling dealer to recover such tax and the purchasing dealer cannot be denied the ITC. It is further clarified that if the department is able to come across any material to show that the purchasing dealer and the selling dealer acted in collusion, then the department can proceed under section 40 of the DVAT Act. Learned counsel for the petitioner has prayed that challenge of the petitioner to the validity of the Section 16(2)(c) be decided in terms of the decision dated 05.08.2024 passed by this Court in WP(C) 2863/2022.

Learned counsel for the Revenue has submitted that he has no objection if the challenge to the Section 16(2)(c) of CGST Act/AGST Act is decided in terms of the decision dated 05.08.2024 passed in WP(C) 2863/2022.

Accordingly, the challenge made to Section 16(2)(c) of CGST Act/AGST Act is decided in terms of decision of this Court dated 05.08.2024 passed in WP(C) 2863/2022.

So far as the validity of Section 16(2)(aa) of the CGST Act/AGST Act is concerned, learned counsel for the petitioner has advanced his submission.

Having heard the learned counsel for the parties and after going through the material available on record, we are of the view that the matter requires consideration.

Hence, **admit.**

No need to issue formal notice to the respondents as they are already represented through their respective counsel.

List the matter for hearing in due course.

JUDGE

CHIEF JUSTICE

Comparing Assistant