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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 10506 of 2025

CE MTTCC JV
Versus
The Superintendent, CGST & Central Excise
Range II, Durgapur II Division & Ors.

Mr. Souradeep Majumder
... For the petitioner.

Mr. Biswajit Maity
... For Union of India.

Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
... For the CGST authorities.

1. Affidavit of service filed in Court today is taken on record.

2. The short point that falls for consideration in the present writ petition is whether the writ petitioner is entitled to the benefit of input tax credit notwithstanding the petitioner having not filed the return under Section 39 of the WBGST/CGST Act, 2017 (hereinafter referred to as the "said Act') within the time prescribed in the said Act.

3. Admittedly in this case, the relevant GSTR-3B for October, 2020 has been filed on 19th February, 2022. It may be noted that ordinarily in terms of the provisions contained in Section 16(4) of the said Act, unless the

return in respect of input tax credit is filed within 30th day of November following the end of financial year, the taxable person is not entitled to the benefit of the input tax credit. The petitioner in respect of the tax period October, 2020 was obliged to file the return at the end of the financial year i.e. March, 2021 on/or before 30th November, 2021. Admittedly such return has been filed beyond the due date on 19th February, 2022. Subsequently, the statute was amended and Section 16(5) of the said Act was inserted by The Finance (No.2) Act, 2024, No.15 of 2024, dated 16th October, 2024 with effect from 1st July, 2017. In terms of the provisions contained in the said newly inserted sub-section (5) of Section 16 of the said Act, it would transpire that the legislature to negate the mischief of Section 16(4) to a certain extent provided therein, had in fact, extended the period for filing the returns under Section 39 of the said Act for the period upto 2020-21, till 30th November, 2021.

4. The learned advocate representing the petitioner would, however, argue that in case of 2020-21 no extension has been granted as in ordinary course the petitioner was entitled to file the return upto 30th November, 2021. Since, extension has been granted for the tax period 2020-21 as is recorded in sub-section (5) of Section 16 thereof, the extended date in respect of

the tax period 2020-21 should be construed as 30th November, 2022. Independent of the above, he would submit that the time to file the return for the year 2020-21 fell during the Covid-19 pandemic and having regard thereto, ordinarily the aforesaid time ought to have been extended especially having regard to the judgment delivered by the Hon'ble Supreme Court in the *suo motu* writ petition (C) 3 of 2020 on 10th January, 2022.

5. Having heard the learned advocates appearing for the respective parties I find that although the Covid-19 period was prevailing during the relevant point of time i.e. during 2020-21 and though the Hon'ble Supreme Court in the *suo motu* writ petition (C) 3 of 2020 had extended the period of limitation, *inter alia,* for filing of appeals/proceedings including suits vide order dated 10th January, 2022, however, having regard to the fact that Section 16(5) had been inserted subsequently, it is obvious that the legislature being conscious of the above situation had chosen not to extend the period for filing returns under Section 39 of the said Act for the year 2020-21, beyond 30th November, 2021. The constitutional validity of the aforesaid Section is not under challenge. Having regard thereto, I am unable to accede to the contention of the petitioner.

6. The writ petition fails and is accordingly dismissed.

7. There shall be no order as to costs.

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.)