

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13158 of 2024

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M/s Platinum Ispat Industries Pvt. Ltd. through its Director, Ashok Kumar Agarwal, S/o- Sant Lal, aged 57 years, resident of Flat No.- 407, Kailash Apartment, Kankarbagh Main Road, P.S.- Kankarbagh, District- Patna, Pin- 800020.

... .. Petitioner/s

Versus

1. The Union of India through the Commissioner of Central Tax, Bihar, GST Bhawan, Beerchand Patel Path, Patna.
2. The Commissioner of Central Tax, Bihar, GST Bhawan, Beerchand Patel Path, Patna.
3. The Assistant Commissioner, CGST and Central Excise, Patna East Division, Sujivan House, Bajrangpuri, Near Mahatma Gandhi Setu, Patna- 800007.

... .. Respondent/s

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Appearance :

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| For the Petitioner/s | : | Mrs.Archana Sinha @ Archana Shahi, Advocate |
| For the Respondent/s | : | Dr. K.N.Singh, A.S.G. |
| | | Mr. Anshuman Singh, Sr. SC, CGST & CX |
| | | Mr. Abhijeet Gautam, Advocate |
| | | Mr. Vivek, JC to ASG |

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-11-2024

The petitioner is concerned with the denial of the input tax claim, as per Annexure-P/3 order of assessment passed on 09.04.2024 for three months in the assessment year 2018-19. The demand-cum-show cause notice at Annexure-P/1 indicates that the returns were filed on 04.02.2020, 05.02.2020 and



10.02.2020 respectively for the months of January to March of the assessment year 2018-19. The only contention is with respect to the input tax credit having been declined.

2. The petitioner relies on the newly introduced sub-section(5) of Section 16 of the CGST Act, which reads as under:-

“(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 upto the thirtieth day of November, 2021.”

3. A circular has also been issued by the Government of India bearing No. 237/31/2024-GST dated 15th October, 2024. Clause 3.5 and 3.5.1 are extracted hereunder:-

“3.5 Where order under section 73 or section 74 of the CGST Act has been issued but no appeal against the said order has been filed with the Appellate Authority, or where the order under section 107 or section 108 of the CGST Act has been issued by the Appellate Authority or the Revisional Authority but no appeal against the said order has been filed with the Appellate Tribunal:

In such cases, where any order under section 73 or section 74 or section 107 or section 108 of the CGST Act has been issued confirming demand for wrong availment of input tax credit on account of



contravention of provisions of sub-section (4) of section 16 of the CGST Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the CGST Act, and where appeal against the said order has not been filed, the concerned taxpayer may apply for rectification of such order under the special procedure under section 148 of the CGST Act notified vide Notification No. 22/2024 - Central tax dated 08.10.2024, within a period of six months from the date of issuance of the said notification.

3.5.1 The taxpayers can file an application for rectification electronically, after login to www.gst.gov.in, using their credentials, by navigating as below in various cases:

- a. In case where an application for rectification of an order issued under section 73 or section 74 of the CGST Act is to be filed:
 - i. Click Dashboard > Services > User Services > My Applications.
 - ii. Select "Application for rectification of order" in the Application Type field. Then, click the NEW APPLICATION button.
- b. In case where an application for rectification of an order issued under section 107 of the CGST Act is to be filed:
 - i. Click Dashboard > Services > User Services > View Additional Notices/Orders
 - ii. Additional Notices and Orders page is displayed. Click the View hyperlink to go to the Case Details screen of the issued Notice/Order.
 - iii. Case Details page is displayed. The APPLICATIONS tab is selected by default.



Select the ORDERS tab and click the "Initiate Rectification" link.

c. In case where an application for rectification of an order issued under section 108 of the CGST Act is to be filed:

- i. Click Dashboard > Services > User Services > View Additional Notices/Orders
- ii. Additional Notices and Orders page is displayed. Click the View hyperlink to go to the Case Details screen of the issued Notice/Order.
- iii. Case Details page is displayed. The NOTICES tab is selected by default. To submit Rectification Request against the Revision Order issued to you by the Revisional Authority, select the ORDERS tab and click the "Initiate Rectification" link.

4. Hence, by virtue of the above provision and the directions issued by the Central Government, the petitioner would be entitled to file a rectification application for consideration of the claim of input tax credit made in the return filed; if it has been so made in the returns filed as indicated from the demand-cum-show cause notice.

5. The petitioner would be entitled to file such rectification application within the time stipulated in the circular, which shall be considered in terms of the newly incorporated provisions under Section 16(5) of the CGST Act and the Circular of the Central Government.



6. The writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

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| AFR/NAFR | NAFR |
| CAV DATE | |
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