

GAHC040007672024



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

Case No. : WP(C)/240/2024

M/s North India Engineering and Anr
having its office at MEMCHI-1, Doimukh, Papumpare District, Arunachal Pradesh,
represented by its proprietor Shri Taba Rama

2: Taba Rama

Age:

Occupation :

Son of Shri Taba Gomb

resident of Emchi- 1 village

proprietor of M/s North India Engineerin

VERSUS

The Union of India and 3 Ors

represented by its Secretary, Govt of India, Ministry of Finance, Department of
Revenue, New Delhi 110001

2:The Commissioner

CGST and CX

Age: 0

Occupation :

Itanagar

Sector A

Naharlagun 791110

3:The Superintendent (Anti Evasion)

Age: 0

Occupation :

Office of the Commissioner

CGST and CX

Itanagar
Sector A
Naharlagun 791110

4:The Additional Commissioner
Age: 0
Occupation :
CGST and CX
Itanagar
Sector A
Naharlagun 79111

Advocate for the Petitioner : A. Goyal

Advocate for the Respondent : Marto Kato, (Election commission),DSGI
M. K. Boro, SC (CGST & CX)

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 16.09.2024
(Kardak Ete, J)

Heard Mr. A. Goyal, learned counsel for the petitioners. Also heard Mr. M. Kato, learned DSGI appearing for the respondent No.1 and Mr. M. K. Boro, learned Standing Counsel, CGST & CX, for the respondent Nos. 2, 3 & 4.

2. By filing this writ petition, the petitioners have put to challenge the vires of Section 16(4) of the GST Act, 2017 and the Order-in-Original dated 22.03.2024, passed by the Additional Commissioner, CGST & CX/respondent No. 2, and also impugned Demand-cum-show cause notice dated 08.05.2023, issued by the

Superintendent (Anti Evasion)/respondent No. 3 by which, the petitioners have been issued notice pertaining to irregular availment of Input Tax Credit (ITC) in respect of financial year 2018-19 by availing Rs. 4,34,66,382.27/- and demanding SGST and CGST, totalling Rs. 4,34,66,380/- availed and utilized during the period from January, 2019 to March, 2019 under Section 73(1) of the CGST Act, 2017, read with the corresponding provisions of Arunachal Pradesh State Goods and Services Act, 2017, with penalty under Section 73(9) read with Section 122(2)(a) of CGST Act, 2017, as well as the relevant provisions of SGST Act, 2017.

3. During the pendency of the writ petition, vide Gazette Notification dated 16.08.2024, an amendment in Section 16 of the Central Goods and Services Tax, has been brought with retrospective effect from 01.07.2017 by inserting Sub-Section (5) in Section 16 of the Central Goods and Services Tax Act, 2017.

4. Section 16(5) of the Central Goods and Services Tax Act, 2017 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, 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. The learned counsels appearing for the respondents are in agreement that

in view of the insertion of Sub-Section (5) in Section 16 of the Central Goods and Services Tax Act, 2017, the grievances raised by the petitioner has been redressed.

6. The learned counsel for the petitioner, submits that in view of the amendment brought in Section 16 of the Central Goods and Services Tax Act, 2017 by inserting Sub-Section (5), the impugned order dated 22.03.2024 and the notice dated 18.05.2023 passed by the respondent authorities may be set aside and matter be remanded back and direction may be issued to pass an appropriate order in view of insertion of Sub-Section (5) of Section 16 of Central Good and Services Tax Act, 2017.

7. In view of the submissions made by the learned counsels for the parties and also considering the amendment brought in Section 16 of the Central Goods and Services Tax Act, 2017, by inserting Sub-Section (5), the impugned Order-in-Original, dated 22.03.2024 and Demand notice dated 15.08.2023, are hereby set aside without adjudicating the said orders on merit.

8. The respondent authorities are directed to consider and pass an appropriate order taking into consideration of the provision of Sub-Section (5) of Section 16 of the Central Goods and Services Tax Act, 2017, vide Amendment (Finance Act, 2024) dated 16.08.2024.

9. This writ petition stands disposed of, in terms of the above observation

and direction.

JUDGE

JUDGE

Comparing Assistant