

GAHC040007672024



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

Case No. : WP(C)/471/2022

SATYAM ISPAT (NORTH EAST) Limited

Age: 0

Occupation :

Address: A Company registered under the Companies Act
1956 having its Office at Satyam Group Premises

NH 52

Banderdewa

Papum Pare

Arunachal Pradesh

791123 and in the present proceedings represented by one of its Directors
Mr. Harsh Sharma.

VERSUS

THE UNION OF INDIA and 4 Ors.

Age: 0

Occupation :

Address: Represented by its Secretary to the Govt. of India
Ministry of Finance

Department of Revenue

New Delhi 110001

2: Commissioner

Age: 0

Occupation :

Address: CGST and CX

Itanagar Commissionerate

Sector A Naharlagun 791110

3:Assistant Commissioner

Age: 0

Occupation :

Address:CGST and CX

Itanagar Commissionerate

Sector A

Naharlagun 791110

4:Assistant Commissioner (TAR)

Age: 0

Occupation :

Address:CGST and CX Commissionerate

Itanagar

Arunachal Pradesh 791110

5:Superintendent (TAR)

Age: 0

Occupation :

Address:CGST and CX Commissionerate

Itanagar

Arunachal Pradesh 791110

Advocate for : P Baruah

Advocate for : Marto Kato appearing for THE UNION OF INDIA and 4 Ors.:

Advocate ,

Advocate for the Petitioner : Dr. A. Saraf, T. Y. Bhutia

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

16.09.2024

(Kardak Ete, J)

Heard Dr. A. Saraf, learned Senior Advocate assisted by Ms. T. Y. Bhutia, 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/respondent Nos. 2, 3 & 4.

2. By filing this writ petition, the petitioner has put to challenge the vires of Section 16(4) of the GST Act, 2017 and the Order-in-Original dated 30.03.2022, passed by the Assistant Commissioner, CGST & CX, Itanagar Division/respondent No. 3, whereby, the petitioner is directed to pay to the demand of Input Tax Credit of IGST, CGST and SGST amounting to Rs. 1,64,43,484/- availed and utilized irregularly during the period from January, 2020 to March, 2020, in terms of Sub-Section (9) of Section 73 of the CGST Act, 2017, read with Section 20 of the IGST, 2017, with interest at applicable rate i.e. 24% under Section 50(3) of the CGST Act, 2017 for a period from due date of payment to date of actual payment, with penalty amounting to Rs. 16,44,348/- which is equivalent to 10% of the tax due under Sub-Section (9) of Section 73 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. The petitioner further has challenged the recovery notices dated 05.08.2022 and

24.08.2022, whereby, the petitioner has been directed to submit the Challan of payment of the amount demanded vide order in original dated 30.03.2022.

3. During the pendency of the writ petition, vide Gazette Notification dated 16.08.2024, an amendment with Section of 16 of the Central Goods and Services Tax has been brought in 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 grievance raised by the petitioner has been redressed.

6. Dr. A. Saraf, learned Senior Advocate 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-in-Original dated 30.03.2023 and recovery notices dated 05.08.2022 and 24.08.202, 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 of Section 16 of the Central Goods and Services Tax Act, 2017, by inserting Sub-Section (5), the impugned order in original dated 30.03.2023 and recovery notices dated 05.08.2022 and 24.08.202, 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

