

GAHC010085242024



2024:GAU-AS:11281

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

Case No. : WP(C)/2343/2024

M/S SUSHEE INFRA AND MINING LTD. A COMPANY HAVING ITS OFFICE AT
HOSUE NO. 4B, TORALI PATH, PANJABARI, GUWAHATI, KAMRUP, ASSAM,
PIN- 781037, REPRESENTED BY ITS DIRECTOR SHRI ADLA JAIPAL REDDY,
S/O- ADLA KRISHNA REDDY, R/O- KOKAPET, P/O- KOKAPET, P.S.
NARSINGI, K.V. RANGAREDDY DISTRICT, HYDERABAD, TELANGANA.

VERSUS

1: THE UNION OF INDIA AND 3 ORS. REPRESENTED BY THE SECRETARY,
MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI-110001.

2: THE STATE OF ASSAM REPRESENTED BY THE CHIEF SECRETARY TO
THE GOVERNMENT OF ASSAM BLOCK-C 3RD FLOOR JANATA BHAWAN
DISPUR GHY-781006.

3: THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
GST POLICY WING NEW DELHI REP. BY ITS COMMISSIONER.

4: THE DEPUTY COMMISSIONER OF STATE TAX GUWAHATI-B-99
GUWAHATI-B KAR BHAWAN G.S. ROAD GUWAHATI ZONE -B ASSAM

For the Petitioner(s) : Mr. V. Prasad, Advocate (through video-conferencing) and Mr. A. Nath,
Advocate.

For the Respondent(s) : Ms. K. Phukan, Central Govt. Advocate for respondent No.1.
: Mr. D.K. Sarmah, Additional Senior Govt. Advocate, Assam for
respondent No.2.
: Mr. S.C. Keyal, Standing Counsel, CGST for respondent No.3.
: Mr. B. Gogoi, Standing Counsel, Finance Department for respondent
No.4.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

20.11.2024

(Vijay Bishnoi, CJ)

This writ petition is preferred on behalf of the petitioner essentially challenging the validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as "CGST Act"). The petitioner has prayed for quashing and setting aside the Notification dated 31.03.2023 issued by the Ministry of Finance (Department of Revenue), whereby the time limit was extended for passing the orders under Section 73 of the CGST Act. The petitioner has also prayed for quashing and setting aside of the order dated 28.01.2024 issued by the respondent No.4 under the provisions of the CGST Act.

It is submitted by Mr. V. Prasad, learned counsel for the petitioner that with the insertion of sub-section (5) in Section 16 of the CGST Act by way of the Finance Act, 2024, the grievance of the petitioner regarding availment of input tax credit is more or less resolved. However, it is submitted that the impugned order in respect of certain other demands had been passed without providing any opportunity of hearing to the petitioner. Learned counsel for the petitioner, therefore, submits that if this Court deems it appropriate then the matter may be remitted back to the authority concerned for deciding the claim of the petitioner afresh after providing an opportunity of hearing to it in accordance with the provisions of the CGST Act.

Mr. B. Gogoi, learned counsel appearing for the revenue has also submitted that he is already in receipt of instructions from the Department and that the matter may be remitted back to the authority concerned for deciding

the issue afresh in accordance with the provisions of the CGST Act, including the new amendment introduced in Section 16(5) of the CGST Act.

In view of the above submissions made by the learned counsel appearing for the parties, the impugned order dated 28.01.2024 passed by the respondent No.4 is set aside. The matter is remitted to the respondent No.4 to decide the matter afresh in accordance with the provisions of Section 16 of the CGST Act, as amended, after providing an opportunity of hearing to the petitioner, within a period of 2(two) months from the date of production of a certified copy of this order.

With the above observation and direction, the writ petition stands disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant