

16.05.2023
PB
Sl. No.7.

WPA 4373 of 2023

ETC Agro Processing (India) Pvt. Ltd.
Vs
Union of India & Ors.

Mr. Ankit Kanodia,
Ms. Megha Agarwal,
Mr. Jitesh Sah.

... For the Petitioner.

Mr. A. Ray,
Mr. T. M. Siddiqui,
Mr. D. Ghosh,
Mr. V. Kothari.

.....for the State.

The affidavit in opposition filed by the respondents in Court today be kept with the record.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has made prayer for direction upon the respondents WBGST authority concerned for granting refund of amount of the IGST already paid pursuant to the impugned Entry No.10 of Notification No.10/2017-IGST Rate) dated 28th June, 2017 which has been denied to the petitioner on the ground of alleged limitation.

Learned advocate appearing for the petitioner relies an unreported decision of the Hon'ble Gujarat High Court, dated 26th April, 2023 in petitioner's own case bearing case No.R/Special Civil Application No.1204 of 2021 by relying on the decision of the

Hon'ble Supreme Court declaring the impugned notification as unconstitutional.

Mr. Siddiqui, learned Additional Government Pleader is not in a position to deny the aforesaid factual and legal position that the impugned notification has been already declared unconstitutional by the Hon'ble Supreme Court and that the aforesaid judgment of the Hon'ble Gujarat High Court in the case of petitioner itself has not been stayed or interfered till date by any higher forum.

Considering the facts and circumstances of this case and submission of the parties and in view of the discussions made above, the impugned orders rejecting the petitioner's application for refund relating to the period July, 2017 to June 18 are set aside and the matter is remanded back to the respondent authorities concerned to reconsider and take a fresh decision for granting refund to the petitioner on merit and by taking into consideration the aforesaid judgment of the Hon'ble Gujarat High Court within a period of 12 weeks from the date of communication of this order.

With this observation and direction, this writ petition being WPA 4373 of 2023 is disposed of.

(Md. Nizamuddin, J.)

