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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12537/2024 & CM APPL. 52163/2024 (Interim Stay)

M/S ASP MICROSYS .....Petitioner

Through: Mr. Pulkit Verma and Mr. Sushil Kumar, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Atul Tripathi, SSC for R-1,2,3 & 4.
Mr. Ravi Prakash, CGSC along with Mr. Taha Yasin, Ms.Ashi Khandelwal, Ms. Isha Kanth and Mr. Yasharth Shukla, Advocates.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **05.11.2024**

1. The petitioner has impugned the Order-in-Original dated 30 April 2024 and additionally assails the validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 [**'CGST Act'**].

2. The principal grievance of the writ petitioner with respect to sub-section (4) of Section 16, however, according to learned counsel, now stands satisfied in light of the amendments which have come to be introduced in Section 16 by virtue of Finance (No.2) Act, 2024.

3. We note that in terms of Section 118 of the aforesaid enactment, a sub-section (5) has come to be introduced in Section 16 of the CGST Act and which reads as follows:

> "(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 up to the thirtieth day of November, 2021."

4. We note that the Finance (No.2) Act, 2024 had provided that sub-section (5) would come into force from such date as may be notified by the Union Government. Learned counsel appearing for the writ petitioner has placed for our perusal a Notification dated 27 September 2024, in terms of which Section 118 of Finance Act (No.2) of 2024 has been declared to come into force from the date of that Notification. A copy of the Notification which was placed for our perusal may be included on our digital record.

5. Taking note of the aforesaid amendments, the Court in **I C Electricals Company Pvt. Ltd. vs Union of India** [W.P.(C) 1541/2024 decided on 23 August 2024], had while dealing with an identical challenge disposed of the writ petition by observing as follows:

> "4. Learned counsel appearing for the petitioner submits that in view of the introduction of sub-section 5 of Section 16 of the CGST Act/DGST Act by virtue of Finance (No.2) Act, 2024, the petitioner's grievance with regard to the impugned SCN would be addressed if the matter is remanded to the concerned authority to re-adjudicate the impugned SCN once again in the light of introduction of sub-section 5 of Section 16 by Finance (No.2) Act, 2024.
> 5. The learned counsel for petitioner unequivocally states that the petitioner is not pressing the challenge to the constitutional validity of Section 16(4) of CGST Act/DGST Act.
> 6. Mr. Singla, learned counsel for the respondent no.2, states that the respondent has no objection if the order passed pursuant to the impugned SCN is set aside and the matter is remanded to the Adjudicating Authority to re-adjudicate the impugned SCN in light of the statutory amendments introduced by Finance (No.2) Act, 2024."

6. Following the aforesaid, we allow the instant writ petition and quash the impugned Order-in-Original of 30 April 2024. The matter shall stand revived before the third respondent who shall examine the

case afresh and bearing in mind the provisions enshrined in Section 16(5) of the CGST Act.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 5, 2024/sky