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

\+ W.P.(C) 12654/2024 & CM APPL. 52617/2024 – STAY

MR. GOPAL GUPTA .....Petitioner

Through: Mr Sumit K. Batra, Mr. Manish Khurana, Ms Priyanka Jindal and Mr. Siddhanth Sarwal, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX & ANR. .....Respondents

Through: Mr. Gibran Naushad, Senior Standing Counsel.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**O R D E R**

% **13.11.2024**

1. We take note of the principal amendments which have come to be introduced in Section 16 of the Central Goods and Services Tax Act, 2017 and which has seen the addition of sub-section (5) therein.

2. The said amendment has come to be introduced by virtue of Finance (No. 2) Act of 2024 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 2017-2018, 2018-2019, 2019-2020 and 2020-2021, 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."

3. Pursuant to the aforesaid, the respondents have issued a Notification No. 22/2024 dated 08 October 2024 and which reads as under:-

"GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION

No. 22/2024– CENTRAL TAX

New Delhi, dated the 8th October, 2024.

**S.O....(E).** — In exercise of the powers conferred under the section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure for rectification of order, to be followed by the class of registered persons (hereinafter referred to as the said person), against whom any order under section 73 or section 74 or section 107 or section 108 of the said Act has been issued confirming demand for wrong availment of input tax credit, on account of contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the said Act, and where appeal against the said order has not been filed, namely:–

2. The said person shall file, electronically on the common portal, within a period of six months from the date of issuance of this notification, an application for rectification of an order issued under section 73 or section 74 or section 107 or section 108 of the said Act, as the case may be, confirming demand for wrong availment of input tax credit, on account of contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of section 16 of the said Act, and where appeal against the said order has not been filed.

3. The said person shall, along with the said application, upload the information in the proforma in **Annexure A** of this notification.

4. The proper officer for carrying out rectification of the said order shall be the authority who had issued such order, and the said authority shall take a decision on the said application and issue the rectified order, as far as possible, within a period of three months from the date of the said application.

5. Where any rectification is required to be made in the order referred to in paragraph 1 and, the said authority has issued a rectified order thereof, then the said authority shall upload a summary of the rectified order electronically –

(i) in FORM GST DRC-08, in cases where rectification of an order issued under section 73 or section 74 of the said Act is made; and

(ii) in FORM GST APL-04, in cases where rectification of an order issued under section 107 or section 108 of the said Act is made.

6. The rectification is required to be made only in respect of demand of such input tax credit which has been alleged to be wrongly availed in contravention of provisions of sub-section (4) of section 16 of the said Act, but where such input tax credit is now available as per the provisions of sub-section (5) or sub-section (6) of the said section 16.

7. Where such rectification adversely affects the said person, the principles of natural justice shall be followed by the authority carrying out such rectification."

4. In view of the aforesaid, we dispose of the present writ petition, with liberty being reserved to the writ petitioner to file an appropriate rectification application in respect of the order dated 29 August 2024.

5. The said rectification application may be disposed of in accordance with law, bearing in mind the statutory amendments which have been introduced and have been noticed hereinabove.

**YASHWANT VARMA, J**

**DHARMESH SHARMA, J**

**NOVEMBER 13, 2024/gunn**