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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 612 of 2025

GJK Shellex India Private Limited
Versus
The State of West Bengal & Ors.

Mr. Avra Mazumder
Ms. Alisha Das
Mr. Suman Bhowmik
Mr. Samrat Das
Ms. Elina Dey
Mr. Sourendra Nath Banerjee
... For the petitioner

Mr. A. Ray
Mr. T. M. Siddiqui, Sr. Advocate,
Mr. N. Chatterjee
Mr. Tanoy Chakraborty
Mr. D. Sahu
... For the State.

1. Challenging the appellate order dated 25th November, 2024 passed under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") for the Financial Year 2019-2020, the instant writ petition has been filed.

2. Having heard the learned advocates appearing for the respective parties, it transpires that initially a show cause notice was issued under Section 74 of the said Act and accordingly on the basis thereof an order under Section 74 of the said Act was passed on 12th May, 2021. Subsequently, the appellate authority while

hearing out the appeal by taking note of the provisions contained in Section 74 and 73 of the said Act was of the view that though the petitioner had wrongly availed input tax credit however, since it could not be established that the availment of input tax credit was by reasons of fraud, wilful misstatement or suppression with an intent to evade tax, the appellate authority had proceeded to hold that the present proceeding should be treated as a case within the meaning of Section 73 of the said Act. It further appears that the appellate authority while deciding the challenge did not appropriately take note of the provisions contained in Section 16(2) and Section 16(5) of the said Act and also failed to take note of the returns filed by the petitioner in respect of the period of dispute which falls in the Financial Year 2019-2020 though the same had been filed within the extended period as provided for in Section 16(5) of the said Act.

3. Having regard thereto, I am inclined to remand back the matter to the appellate authority with a direction upon the appellate authority to reconsider the above appeal in the light of GSTR-2A, a copy whereof has been placed before this

Court, and to decide the applicability of Section 16(5) of the said Act, having regard to the returns filed by the petitioner within the extended cutoff date as provided therein.

4. The matter is remanded back to the appellate authority for passing a fresh order. Consequentially, the order impugned shall not be given effect to till such time a fresh order is passed and upon passing of such order, the above order impugned shall form part of the order to be passed by the appellate authority.

5. With the above observations and directions, the writ petition is disposed of.

6. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)