Form No. J.(2)
Item No.9
Pallab/KS AR(Ct.)

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 21.05.2025

DELIVERED ON: 21.05.2025

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

M.A.T. 693 of 2025
With
I.A. No. CAN 1 of 2025
+
CAN 2 of 2025

Adhiraj Distributors Limited & Anr.
Vs.
The Additional Commissioner of Revenue,
Chowringhee Circle, Govt. of West Bengal & Ors.

Appearance:-
Mr. Ankit Kanodia
Ms. Megha Agarwal

.....For the Appellants

Mr. Anirban Roy, Ld. G.P.
Md. T. M. Siddiqui, Ld. A.G.P.
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

.....For the State

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against an interim order dated 29th July, 2024 passed in W.P.A. 14737 of 2024. By the said order, the learned Single Bench directed the appellants/writ petitioners to deposit with the learned Registrar General a sum of Rs.25 lakhs within a period of three weeks from the date of the order and the said amount to be invested in any interest bearing fixed deposit account with any Nationalised bank and the same should be kept renewed until further orders of the Court. If the writ petitioners comply with the said direction, there was unconditional

order restraining the department from taking coercive action against the writ petitioners.

2. The appellants had complied with the said order and the same was recorded by the learned Single Bench in its order dated 30th September, 2024.

3. The appellants are aggrieved not only by the condition imposed by the Court but also with regard to the other subsequent developments, which have necessitated filing of this appeal.

4. There is a delay of 251 days in filing the appeal and the delay has been sufficiently explained and therefore, the delay in filing the appeal is condoned and the application being, CAN 2 of 2025 is allowed.

5. On account of certain developments, which had taken place during the pendency of the writ petition, both the writ petition as well as this appeal can be disposed of by this common judgment and order.

6. In the writ petition, the appellants had primarily sought for two reliefs, first of which being seeking for declaration to declare Section 168A of the CGST/WBGST Act, 2017 as *ultra vires*. The second relief is to set aside the order of adjudication dated 22nd January, 2024.

7. Mr. Ankit Kanodia, learned advocate appearing for the appellants on instructions, submits that the appellants/writ petitioners do not press for the prayer to declare Section 168A of the Act as *ultra vires*. This submission is placed on record and Prayer – (a) in the writ petition is struck off. This leaves us only with one prayer i.e. the challenge to the adjudication order dated 22nd January, 2024.

8. As mentioned above, certain subsequent events would be relevant to be taken into consideration for the purpose of deciding as to what relief, the appellants/writ petitioners would be entitled to.

9. The Central Board of Indirect Taxes and Customs issued Notification No.22/2024 – Central Tax dated 8th October, 2024, by which a special procedure for rectification of order, to be followed by the class of registered persons against whom any order under Section 73 or Section 74 or Section 107 or Section 108 of the Act has been issued confirming the demand for wrong availment of input tax credit on account of contravention of provision of sub-section (4) of Section 16 of the Act. The procedure has also been stipulated.

10. Therefore, a window has been given to the assessee to rectify the defect though certain timelines have been fixed in the said Notification. More importantly in terms of Section 118 of the Finance (No.2) Act, 2024, sub-section (5) was inserted in Section 16 of the CGST Act, 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, 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."*

11. The above newly inserted provision has come into force from the date of the Notification i.e. 27th September, 2024 that is when the writ petition was pending before this Court.

12. Therefore, the matter has to be re-adjudicated by the adjudicating authority in the light of the insertion of sub-section (5) to Section 16. In fact, identical issues arose before the High Court of Delhi in the case of ***I C Electricals Company (P.) Ltd. Vs. Union of India [W.P.(C) No.1541 of 2024 dated 23rd August, 2024]***, wherein the Court after taking note of insertion of sub-section (5) to Section 16 directed the adjudicating

authority to re-adjudicate the show-cause notice. This order was followed by the High Court of Delhi in ***ASP Microsys Vs. Union of India*** reported in ***(2025) 27 Centax 394 (Del.)***.

13. Similar view was taken by the High Court of Jharkhand at Ranchi in ***Singh Construction Company Vs. State of Jharkhand*** reported in ***(2024) 23 Centax 401 (Jhar.)***. The only factual difference in the case on hand is that the show-cause notice has ripened into an adjudication order. However, taking note of the fact that the statute has been amended by insertion of sub-section (5) to Section 16, we are of the view that the show-cause notice should re-adjudicated.

14. For the above reasons, the appeal and the writ petition are allowed and the order of adjudication is set aside and the show-cause is restored to the file of the adjudicating authority to be re-adjudicated taking into consideration sub-section (5) of Section 16 of the Act, which has been made effective with effect from 1st July, 2017.

15. The adjudicating authority shall afford one more opportunity to the appellants/writ petitioners to submit an additional reply to the show-cause notice and re-adjudicate the matter in accordance with law after affording an opportunity of personal hearing to the authorised representative of the appellants/assessee.

16. As mentioned above, the prayer to declare Section 168A of the Act has been given up and accordingly, the said prayer has been struck off.

17. In the light of the above order, the amount of Rs.25 lakhs, which was deposited before the learned Registrar General and in turn directed to be invested in an interest bearing account shall be returned to the appellants after deducting the commission deductible.

18. So far as the interest, which has accrued on the said sum of Rs.25 lakhs, the same shall not be returned to the appellants but to be credited to the account of the West Bengal State Legal Services Authority.

19. The above direction be complied with by the learned Registrar General of this Court by 27th June, 2025.

20. No costs.

21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)