IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **17.11.25**
Item No.06 Sws.M

WPA 20176 of 2025

M/s. Svaksha Distillery Limited & Anr.
Vs
The Assistant Commissioner of WBGST, Barasat Charge and Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
Ms. Tulika Roy
...for the petitioners

Mr. N. Chatterjee
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal
...for the State-respondents

1. The petitioners principally assail an order dated June 30, 2025 whereby the Appellate Authority (under Section 107 of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017) (hereafter "the said Act of 2017") has rejected the petitioners' request for rectification of an order dated June 14, 2024 passed by the said authority under Section 107 of the said Act of 2017. Such request had been made by the petitioner in terms of a Notification dated October 8, 2024 issued by the Central Board of Indirect Taxes and Customs under Section 148 of the said Act of 2017.

2. The case run in the writ petition and as submitted by Mr. Kanodia, learned advocate appearing for the petitioners is as follows :

a) The petitioners, engaged in the business of manufacturing and supply of ethanol, had deferred availment of Input Tax Credit (hereafter "ITC") for Financial Years 2018-19 and 2019-20 to subsequent periods since the output tax payable by the petitioner was negligible.

b) The ITC in respect of financial year 2018 – 2019 and 2019 – 2020 was ultimately claimed by the petitioners while filing return in Form GSTR-3B for the quarter of January to March pertaining to Financial Year 2020- 2021.

c) On scrutiny of the returns for the Financial Year 2020-2021 the respondent GST authorities issued a pre-show cause notice alleging that the petitioners had claimed excess ITC in respect of the said Financial Years (i.e. 2020 – 2021).

d) The petitioners sought to answer the charge levelled, by clarifying that the Input Tax Credit was actually in respect of Financial Years 2018-19 and 2019- 2020 which was duly reflected in Form GSTR-2A filed by the petitioners in respect of the aforesaid Financial Years (i.e. 2018-19 and 2019-20) and that the same was being collectively claimed in Financial Year 2020-2021. The petitioners' explanation did not find favour with the adjudicating authority.

e) A show cause notice was issued to the petitioners thereby calling for an explanation as to why excess ITC availed by the petitioners should not be reversed along with interest and penalty.

f) The petitioners replied to the said notice to show cause by reiterating the stand taken by them in the reply to the pre-show cause notice. The Adjudicating Authority was not satisfied with the petitioners' response.

g) The same was carried in appeal by the petitioners before the Appellate Authority under section 107 of the said Act of 2017.

h) The said appeal was also rejected by an order dated June 14, 2024.

i) Subsequently, sub-section (5) was inserted in Section 16 of the said Act of 2017 with retrospective effect from July 1, 2017 thereby providing a one-time relief to tax payers by extending the time for availing ITC for Financial Years 2017-18, 2018-19, 2019-20 and 2020-21. A notification dated October 8, 2024 was also issued by the Central Board of Indirect Taxes and Customs in exercise of the authority under Section 148 of the said Act of 2017 thereby notifying special procedure, for rectification of order, to be followed by registered persons against whom orders under Section 73, Section 74 or Section 107 or Section 108 had been issued. The Government of West Bengal also took out a similar notification.

j) The petitioners found themselves to be statutorily eligible to avail the ITC in terms of the provisions of Section 16(5) of the said Act of 2017 and the aforesaid Notifications.

k) Under such circumstances, on the strength of the said notifications, the petitioners made an application for rectification before the Appellate Authority thereby requesting the Appellate Authority to rectify its earlier order dated June 14, 2024. The said application for rectification was rejected by the Appellate Authority by the order impugned. Hence this writ petition.

3. Mr. Chakraborty, learned advocate appearing for the respondents submits, on instructions, that in terms of Section 16(5) of the said Act of 2017, the registered persons may avail ITC for the Financial Years 2017 – 2018 to 2019 – 2020, if such persons have claimed the same within November 30, 2021.

4. Mr. Kanodia submits that in the case at hand the petitioners have lodged the claim within November 30, 2021 and that the Appellate Authority ought to have allowed the petitioners’ request for rectification.

5. Having heard the learned Advocates for the respective parties and having considered the material

on record, there does not appear to be any dispute as regards the legal position that a registered person who satisfies the provisions of Section 16(5) of the said Act of 2017 and the aforesaid Notifications, would be entitled to claim ITC in respect of any Financial Year falling between the Financial Year 2017 – 2018 by lodging his claim within November 30, 2021.

6. The Notification dated October 8, 2024 issued by the Central Board of Indirect Taxes and Customs also clarifies and provides the procedure for seeking rectification of any original or appellate order passed against such person on account of wrongful availment of ITC on account of contravention of provisions of Section 16(4) of the said Act of 2017 provided such person is entitled to avail ITC in terms of Section 16(5) or 16(6) of the said Act of 2017.

7. Such being the situation, the Appellate Authority ought to have considered the petitioners' case in the light of the provisions of Section 16(5) of the said Act of 2017 and the Notification dated October 08, 2024. It is noticed that the Appellate Authority has in its order dated June 14, 2024 referred to Section 16(4) of the said Act of 2017 as one of the grounds to confirm the adjudication order and to reject the petitioners' appeal but in the order dated June 30, 2025 the said Authority has bypassed the same by

stating that the petitioners' case is not related to Section 16(4) of the said Act of 2017.

8. Since the petitioners have filed the applications for rectification on the strength of the notification dated October 8, 2024 issued under Section 148 of the said Act of 2017, the matter should be revisited by the Appellate Authority afresh in the light of law governing the field.

9. The order impugned dated June 30, 2025 thereby rejecting the application for rectification is set aside. The matter is remanded to the file of the Appellate Authority to consider the petitioners' application for rectification afresh, in accordance with law and specially in the light of the notification dated October 8, 2024 and Section 16(5) of the said Act of 2017.

10. It is submitted by the petitioners that in the meantime there has been a recovery of substantial sum from the petitioners. The petitioners shall be at liberty to pray for refund of the recovered sum, in accordance with law.

11. **WPA 20176 of 2025** is **disposed of.**

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(Om Narayan Rai , J.)