Form No. J2. **Calcutta High Court**
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

Present:
The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Om Narayan Rai

MAT No. 109 of 2026
+
CAN 1 of 2026
+
CAN 2 of 2026

Union of India and others
Vs.
Umen Chandra Roy

For the appellants : Mr. Dilip Kumar Agarwal,
Mr. Biswa Raj Agarwal, Advs.

For the respondent : Mr. Dhiraj Lakhotia,
Ms. Radhika Agarwal,
Ms. P. Chowdhury,
Ms. Nikita Kundu,
Ms. Neha Lama, Advs.

Heard on : November 26, 2026.

Judgment on : November 26, 2026.

Sabyasachi Bhattacharyya, J:-

Re : CAN 1 of 2026 (condonation)

1. Upon hearing learned counsel for the parties, we find sufficient explanation for the delay in preferring the appeal having been made out.

2. Accordingly, CAN 1 of 2026 is allowed on contest, thereby condoning the delay in preferring MAT No. 109 of 2026.

3. There will be no order as to costs.

Re: MAT No. 109 of 2026.

4. A short point is involved in the appeal.

5. Learned counsel appearing for the appellants-authorities contends that the learned Single Judge, in the impugned order, committed an error of law in interpreting a notification dated October 8, 2024 published under Section 148 of the Central Goods and Services Act, 2017 (for short, "the 2017 Act") to be directory and not mandatory.

6. Learned counsel argues that the learned Single Judge failed to take into consideration the effect of Section 148 inasmuch as the said provision confers power on the Government, on the recommendations of the Council and subject to such conditions and safeguards as may be prescribed, to notify certain classes of registered persons and special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

7. Learned counsel contends that there is no apparent conflict between the notification-in-question and Section 16(5) of the 2017 Act inasmuch as the said Section provides a right to the assessee in respect of input tax credit in any return under Section 39, which is filed up to the 30th day of November, 2021, for the period pertaining to Financial Years 2017-2018, 2018-2019, 2019-2020 and 2020-2021. However, the powers of the Government under Section 148 are unfettered insofar as the special procedure to be prescribed in that regard is concerned.

8. Learned counsel takes the Court through the respective provisions indicated above.

9. It is further submitted that if the interpretation lent by the learned Single Judge is to be accepted, the same will have far-reaching and nationwide consequences in respect of revenue compliances, which is a time-bound process.

10. On the other hand, learned counsel for the writ petitioner/respondent argues that a right conferred by Section 16(5) of the said Act cannot be taken away by a notification issued by the Executive by introducing a limitation period of six months for filing an application for rectification *de hors* the statute.

11. Upon hearing learned counsel for the parties, we find that the learned Single Judge, in the impugned judgment, took into consideration the interplay between Section 16(5) and the notification dated October 8, 2024.

12. The relevant provisions of Sections 16(4), 16(5) and 148 are quoted hereinbelow:

> *"**Section 16** …*
>
> ***(4)** – A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [thirtieth day of November] following the end of financial year to which such invoice or [omitted] debit note pertains or furnishing of the relevant annual return, whichever is earlier.*
>
> *[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice*

relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section(1) of Section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019].

***(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.*

…

***Section 148. Special procedure for certain processes**.*

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing or return, payment of tax and administration of such persons".

13. From a plain reading of sub-section (5) of Section 16, as it stands after introduction by way of the 2024 Amendment (with retrospective effect from July 1, 2017), it is evident that the same carves out an exception to the bar under sub-section (4) of Section 16.

14. We also take note of the *non obstante* clause prefixing sub-section (5) of Section 16.

15. As per the said provision, with regard to the financial years-in-question, a registered person "shall be entitled" to take input tax credit in any return under Section 39, which is filed up to the 30th day of November, 2021.

16. We do not find within the four corners of the 2017 Act any provision limiting a claim to such entitlement insofar as the temporal aspect of the same is concerned.

17. On the other hand, Section 148 of the said Act confers power on the Government to lay down special procedures to be followed with regard to registration, furnishing of return, payment of tax and administration of such persons. Admittedly, the notification dated October 8, 2024 has been issued under the said provision.

18. In Clause (2) of the notification, it is provided that the concerned person "shall file, electronically on the common portal, *within the 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 2017 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 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".

19. Thus, even on a plain reading of the said clause, it is evident that the limitation of six months from the date of issuance of the notification applies to an application for rectification, *confirming demand* for wrong availment of input tax credit on account of contravention of provisions of sub-section (4) of Section 16 of the 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 applies.

20. The use of the expression “confirming” clearly indicates that the bar of six months is not an absolute one, since by dint of the application for rectification, the assessee only *confirms* the demand flowing from an entitlement which has been granted by sub-section (5) of Section 16 of the parent statute. That apart, we also find that there is no sanction, either by way of forfeiture or otherwise, or penal provision within the four corners of the notification dated October 8, 2024, providing any penalty / forfeiture and/or any sanction for non-filing of such application within the said period of six months. Moreover, Clause (2) of the notification is not couched in negative language, restraining the authorities from accepting such application if the same is filed after six months.

21. Hence, even in the notification itself, the period of six months has not been indicated to be mandatory in nature.

22. Even otherwise, the statutory right conferred under Section 16(5) of the 2017 Act is untrammelled and cannot be curtailed by dint of a Government notification. The power to issue such notification stems from Section 148 of the 2017, which restricts such power only to laying down procedural modalities and cannot be broadened to include introduce limitations to statutory rights where the statue itself does not provide such limitation. Thus, the notification dated October 8, 2024, only insofar as the same pertains to stipulating a limitation period not recognized by the parent statute, is directory in nature.

23. We hasten to add that the notification, otherwise, so far as it relates to special procedures with regard to registration, furnishing of return, payment of tax and administration of the assessee, is mandatory and binding in nature, having been formulated under Section 148 of the 2017 Act.

24. In view of the above, we do not find any error of law on the part of the learned Single Judge in construing the limitation period of six months as provided in the notification dated October 8, 2024 to be directory to the said extent.

25. Accordingly, MAT No. 109 of 2026 is disposed of by affirming the impugned judgment passed in WPA No. 1360 of 2026, however, with the rider that the observations of the learned Single Judge shall be construed to mean that the notification dated October 8, 2024 is directory only insofar as the stipulation of six months' time period in Clause (2) is concerned and the said notification is otherwise mandatory and binding in nature.

26. Before parting with the matter, we must observe that if any limitation period is to be introduced, curtailing the entitlement conferred under Section 16(5) of the 2017 Act, it is for the Legislature to do so by way of an amendment to the statute and not for the Government, by a notification under Section 148 of the 2017 Act, to introduce.

27. In view of the pendency of the present appeal till date, we extend the time for the appellant-authorities to process the application filed by the writ petitioner-respondent for a further period of one month from date.

28. CAN 2 of 2026 is consequentially disposed of.

29. There will be no order as to costs.

30. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Om Narayan Rai, J.)