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14.07.2025
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Ct.5.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4167 of 2025

M/s. Saha Distributors Pvt. Ltd.
Versus
The Director General (East), Directorate General
Of Goods and Services Tax Intelligence & Ors.

Mr. Atish Dipankar Ray
Mr. Soumyajit Mishra
... For the petitioner

Mr. Kaushik Dey
Mr. Tapan Bhanja
... For CGST authorities.

1. Challenging two separate show cause notices both dated 26th July, 2024 issued under Section 74 of the WBGST/CGST Act, 2017 (hereinafter referred to as the “said Act”), *inter alia*, including consequential order under Section 73(9) of the said Act dated 14th December, 2024 and 28th October, 2024, the instant writ petition has been filed.

2. The primary contention of the petitioner is that the respondents could not have proceeded to issue show cause so as to deny the availment and/or utilization of Input Tax Credit (ITC) by the petitioner in respect of the purchases made by the petitioner from suppliers whose registration under the said Act has been subsequently cancelled.

3. It is also the petitioner’s contention that the right to avail ITC having been statutorily provided for in Section

16 of the said Act, the show cause notices are primarily without jurisdiction as the same does not identify infraction of any of the provisions contained in Section 16 of the said Act. Since, the show cause is without jurisdiction, the consequential orders passed under Section 74 of the said Act is also bad and consequentially a nullity and should not be acted upon. According to the petitioner, since the aforesaid is a jurisdictional issue, this Court under Article 226 of the Constitution of India is competent to entertain the petition and adjudicate the same on the merits, notwithstanding the presence of alternative remedy. The Counsel would submit that simply because the petitioner has not availed the alternative remedy, the same should not deter this Court to examine whether any case for interference has been made out. In support of his contention he has placed reliance on the judgments delivered by the Hon'ble Supreme Court in the case of **Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others**, reported in **(2023) SCC Online SC 95** . On the same and identical issue and the right of a party to invoke the extra ordinary writ jurisdiction despite presence of alternative remedy, reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the case of **Syed Maqbool Ali v. State of Uttar Pradesh and Another**, reported in **(2011) 15 SCC 383**. While reiterating his contention on the issue as to whether ITC can be denied contrary to the statutory

mandate provided for in Section 16 of the said Act, he would submit that a taxing statute is to be strictly construed, in absence of any provisions provided for disallowance of ITC in the manner prescribed by law, no other provisions can be read in the statute so as to deny ITC to the petitioner. In support of the above, he relies on the judgment delivered by the Hon'ble Supreme Court in the case of ***Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax***, reported in **(2010) 8 SCC 739** to emphasize that a taxing statute has to be strictly construed.

3. Mr. Dey, learned counsel representing the respondents while objecting to the maintainability of the writ petition on the ground of alternative remedy has drawn the attention of this Court to the provisions of Section 74 of the said Act and would submit that the provisions of Section 74 authorizes the respondents/proper officer not only to embark upon an enquiry but also to determine the liability of the petitioner, if the conditions for invocation of such section are fulfilled. According to him, the petitioner had not challenged the show cause notice previously. The petitioner has also not challenged the invocation of Section 74 of the said Act. Having not done so and having regard to the availability of an efficacious alternative remedy in the form of an appeal, this Court should not accept the challenge made in the writ petition.

4. Having heard the learned counsel appearing for the respective parties, I may notice that the petitioner has

challenged two separate set of proceedings in one particular writ petition. Although, ordinarily the same is not permissible, however, having regard to the fact that the parties have already argued this matter and since the petitioner has undertaken to put in additional court fees, unless sufficient court fees are already paid, I proceed to hear out this matter. I, however, notice from the submissions made by the learned counsel representing the petitioner and the materials available on record that the petitioner's primary challenge is directed against the reversal of the ITC on the ground of irregular avilment of ITC, since, according to the petitioner such reversal has been effected contrary to the provisions contained in Section 16 of the said Act. To appropriately consider the challenge made by the petitioner it is necessary to consider the provisions of Section 16 of the said Act. To appropriately appreciate the same the said Section is extracted hereinbelow:-

“16. Eligibility and conditions for taking input tax credit.—(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

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(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;]

(b) he has received the goods or services or both;

[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted;]

(c) subject to the provisions of [Section 41 [* *]], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and*

(d) he has furnished the return under Section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient

shall be [paid by him along with interest payable under Section 50], in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(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 [* * *] 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 [* *] 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.]

[(6) Where registration of a registered person is cancelled under Section 29 and subsequently the cancellation of registration is revoked by any order, either under Section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice

or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under Section 39,—

- (i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or*
- (ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later.]”*

6. It would appear from the scope of Section 16 that the same provides for the eligibility and the conditions authorizing a Registered Tax Payer (RTP) to seek benefit of ITC. The same provides circumstances under which the RTP shall be entitled to seek the benefit of ITC. In my view the said provision is an enabling provision, enabling the RTP to claim ITC. On the contrary I find that the provisions of Section 74 of the said Act, *inter alia*, provides and/or authorizes the proper officer to determine in cases, where any tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, to initiate the proceeding under the said Section by issuing a notice under Section 74 of the said Act. Admittedly, provisions of the said Act empower the proper officer to scrutinize and/or determine as to whether the ITC has

been wrongly availed and/or utilized by reason of fraud and wilful misrepresentation. Both Section 16 as also Section 74 of the said Act provide for different consequences, and stands on two different and distinguished separate footings as noted above. Unfortunately, the petitioner has attempted to confuse the scope of Section 16 with that of Section 74 of the said Act. Two Sections stand on separate grounds. It is true, that the provisions of taxing statute is to be construed strictly, however, I find that the enquiry initiated by the respondents are well within their authority and/or jurisdiction and on such ground the judgment delivered in the case of ***Ajmera Housing Corporation & Anr.*** (supra) does not assist the petitioner, at all.

7. Admittedly, the provisions of the said Act provide for multi-tiered adjudicatory process. Not only the said Act provides for an appeal before the appellate authority under Section 107 of the said Act but the same also provides for a further statutory appeal before the Appellate Tribunal. The statute has an in-built mechanism which provides for and seeks to maintain a balance between right of the RTP to be entitled to maintain an appeal and the right of the revenue to be entitled to the percentage of the disputed tax in relation to a determination already made pending final outcome in the appellate proceedings. Obviously, the petitioner attempted to avoid payment of pre-deposit, and has approached this Court to by pass the statutory

mechanism for redressal of his grievance. This apart, having regard to the nature of enquiry made pursuant to the show-cause, a detailed enquiry into factual aspects would be necessary. The appellate authority is competent to enter into factual aspects and test out the petitioner's case. Having regard to the disputed question of facts involved, it would be prudent not to entertain the writ petition and leave it for the petitioner to avail the statutory remedy. In the facts as noted above, the judgment delivered in the case of **Godrej Sera Lee Ltd** (supra), in my view, does not assist the petitioner at all. This is not one of such exceptional cases for this Court to entertain a petition of this nature, for identical reasons the judgments relied on by the petitioner delivered in the case of **Syed Maqbool Ali** (supra) is distinguishable on facts and do not assist the petitioner. I may, however, hasten to add that the petitioner had previously approached this Court challenging the action of blocking the electronic credit ledger effected by order dated 20th July, 2024. Since, by such time the impugned show-cause had been issued and was pending adjudication, this Court by order dated 4th October, 2024 had directed the proper officer to expeditiously hear out the show-cause. At that stage, no challenge was made to the show-cause notices. The petitioner had accepted the show-cause and had responded to the show-cause. The above appears to be a desperate attempt to somehow wriggle out of the statutory remedy provided for.

8. The challenge made by the petitioner fails. The writ petition is accordingly dismissed without any order as to costs, leaving it open to the petitioner to approach the appellate authority, if so advised.

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

(Raja Basu Chowdhury, J.)