GAHC010102102024

2026:GAU-AS:10449

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2722/2024

RAJIB AGARWALA
SON OF DHANRAJ AGARWALA,
REPRESENTING DM SERVICES PRIVATE LIMITED,
HAVING THEIR BUSINESS AT GROUND FLOOR, GANPATI ENCLAVE,
GS ROAD, ULUBARI, GUWAHATI- 781007,
KAMRUP METROPOLITAN, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

FINANCE (TAXATION) DEPARTMENT

DISPUR
GUWAHATI- 781006
ASSAM.

3:THE PRINIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001.

4:THE ASSISTANT COMMISSIONER

GST AND CENTRAL EXCISE COMMISSIONERATE
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACHKHOWA

GUWAHATI- 781001.

5:THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
1ST FLOOR
TOWER NBCC PLAZA
1
SECTOR-5

PUSHP VIHAR
NEW DELHI- 110017.

6:THE CHAIRPERSON
GOODS AND SERVICE TAX COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING

JANPATH ROAD
CONNAUGHT PLACE

NEW DELHI- 110001

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. D. Saraf, Advocate

For the Respondent(s) : Mr. S. C. Keyal, Sr. Advocate
: Mr. K. Jain, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **07.08.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : N/A

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Saraf, the learned counsel appearing on behalf of the Petitioner and Mr. S. C. Keyal, the learned Senior counsel assisted by Mr. K. Jain, the learned counsel appearing on behalf of the Respondent Nos. 1, 3, 4, 5 & 6. None appears on behalf of the Finance and Taxation Department on call.

2. The present writ petition has been filed by the Petitioner being aggrieved by the Order-in-Original dated 13.03.2024 primarily on two grounds. The first ground is as regards the extension of the period for exercise of powers under Section 73 of the Central Goods and Services Tax Act, 2017 (for short 'the Act of 2017') vide Notification No.9/2023-CT dated 31.03.2023. The second ground is that the Petitioner having already submitted the return on 23.10.2019, the Petitioner should have been granted the benefit of the Input Tax Credit availed/utilized.

3. Mr. D. Saraf, the learned counsel appearing on behalf of the Petitioner submitted that taking into account the amendment of Section 16 of the Act of 2017 by the Finance Act, 2024 whereby Section 16(5) was inserted, the instant writ petition can be disposed of on the basis of Section 16(5) of the Act of 2017.

4. Taking into account the said submission, this Court finds it relevant to reproduce Sub-Section (5) of Section 16 of the Act of 2017:

> "***16(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."*

5. A perusal of the above quoted Sub-Section would show that notwithstanding anything contained in Sub-Section (4) in respect of an invoice or debit note for supply 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 30.11.2021.

6. In the instant case, from a perusal of the Order-in-Original dated 13.03.2024, it is apparent that the Petitioner has submitted the return on 23.10.2019 for the Financial Year 2018-19. Under such circumstances, it is therefore the opinion of this Court that the benefit of the ITC claimed amounting Rs.84,58,480/- cannot be denied in view of Section 16(5) of the Act of 2017. In that view of the matter, the impugned Order-in-Original dated 13.03.2024 is

required to be interfered with.

7. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned Order-in-Original dated 13.03.2024 passed by the Assistant Commissioner, Goods and Services Tax, Guwahati Division-I stands set aside and quashed.

(ii) Interim order passed earlier stands vacated.

(iii) No costs.

JUDGE

Comparing Assistant