Form J(2)
JPD Sl.No. 47
Moumita
Court no. 10

In the High Court at Calcutta
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

WPA 1360 OF 2026

Umen Chandra Roy
Vs.
The Union of India & Others.

For the Petitioner	: Mr. Dhiraj Lakhotia, Adv. Ms. Radhika Agarwal, Adv. Ms. Parmita Chowdhury, Adv. Ms. Khusi Kundu, Adv. Ms. Nikita Kundu, Adv. Mr. Satyajit Paul, Adv. Ms. Neha Lama, Adv.
For the Respondent/Union of India	: Mr. Dilip Kumar Agarwal, Adv. Mr. Biswaraj Agarwal, Adv.
Heard on	: August 17, 2026.
Judgment on	: August 17, 2026.

[**In Court**]

Aniruddha Roy, J.

1. Mr. Dhiraj Lakhotia, learned Advocate appears for the petitioner.

2. Mr. Dilip Kumar Agarwal, learned advocate with Mr. Biswaraj Agarwal, learned Advocate appears for the respondent/Union of India.

3. The petitioner wants to avail of the Input Tax Credit Facility in respect of a particular return under ***Section 39 of Central Goods and Services Tax Act, 2017*** (hereinafter, 2017 Act) which had been filed up to ***November 30, 2021*** which is within the statutory cut off date fixed under ***Sub-Section 5 to Section 16 of 2017 Act***. The petitioner had filed a rectification application on ***January 12, 2026*** which was supposed to be filed ***within six weeks*** from the date of communication dated ***October 15, 2024, annexure p-6 at page 53*** to the writ petition.

4. Since, the petitioner did not file the application within the said stipulated period which had a retrospective effect under the said ***circular/notification dated April 8, 2024 at page 49*** to the writ petition read with the ***circular dated October 15, 2024 at page 53*** to the writ petition, the rectification application of the petitioner was rejected by the revenue authority by its impugned order dated ***April 8, 2026 annexure p-10 at page 66*** to the writ petition.

5. Mr. Dilip Kumar Agarwal, learned Advocate appearing for the petitioner submits that, the time may be extended though by virtue of the said notification dated ***October 15, 2024*** time has been fixed for preferring a

rectification application for ***six months*** from the date of the said notification but since ***Sub-Section 5 to Section 16 of the 2007 Act*** does not prescribe for any time limit, the time fixed under the said notification/circular can be extended.

6. Mr. Dilip Kumar Agarwal, learned Advocate appearing for the revenue submits that, the order in original dated ***March 6, 2024 at page 42*** to the writ petition was served upon the petitioner on the same day by post and hence has denied the statements made in 2(iii) to (vi) of the writ petition.

7. Hence, the order of rejection of the rectification application dated ***April 8, 2026*** is just and lawful and same should not be interfered with.

8. After considering the rival submissions of the parties and on perusal of the materials on record, it appears to this Court that, ***Sub-Section 5 to Section 16 of 2017 Act*** gives a substantive right to assessee to prefer the rectification application to avail the Input Tax Credit. Such provision does not specify any time within which an assessee has to apply to avail such facility.

9. Through the said ***circular/notification dated April 8, 2024 at page 49*** read with the ***circular dated October 15, 2024 at page 53*** to the writ petition though the department with a prospective effect has limited the period for ***six months*** from the date of issuance of the notification for an assessee to avail Input Tax Credit Facility by filing a necessary

rectification application but in absence of any time frame having been mentioned under ***Sub-Section 5 to Section 16 of the 2017 Act*** which is the substantive provision, the time frame mentioned by the department under the said two notifications ***dated April 8, 2024 read with October 15, 2024*** being the notifications issued in exercise of executive power cannot prevail upon or override a substantive provision under the statute. These notifications will give guideline and are directory in nature and not mandatory.

10. In view of the forgoing reasons and discussions depending upon the fact situation, which shall vary from case to case, this Court by exercising its power under Section 226 of the Constitution of India can extend the period, unless an exceptional delay is there.

11. In view of the above, the order impugned dated ***April 8, 2026 annexure p-10 at page 66*** to the writ petition rejecting the rectification application, submitted by the petitioner, stands ***set aside*** and ***quashed***.

12. In view of the above, the appropriate jurisdictional authority ***shall revisit*** the rectification application which is already on record, strictly in accordance with law and ***shall dispose it of by passing a reasoned order*** positively within ***eight weeks*** from the date of communication of this order.

13. It is made clear that, this court have not expressed any opinion on merit of the rectification application and the jurisdictional authority shall be

free to proceed with it and dispose of it on its own merits in accordance with law.

14. This order, in any event, shall not create any right of equity in favour of the petitioner, in the event, the petitioner is found not entitled to get relief in the rectification application strictly in accordance with law.

15. Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

16. The writ petition ***WPA 1360 of 2026*** stands ***disposed of***, without any order as to costs.

17. Parties shall act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)