

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

WPA 1995 of 2026

Sri Sumant Kumar Agarwal
Versus
The Commissioner of CGST & CX, Siliguri
Commissionerate & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
Ms. Nikita Kundu
Ms. P. Chowdhury
Ms. Neha Lama

... For the petitioner.

Mr. Dilip Kumar Agarwal
Mr. Biswaraj Agarwal

... For the respondents

1. Challenging the communication of rejection of an appeal under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) dated 15th May, 2024 arising out of a challenge to an order passed under Section 74(9) of the said Act dated 23rd May, 2023 for the tax period of 2018-19, the instant writ petition has been filed.
2. Mr. Lakhotia, learned advocate representing the petitioner has drawn attention of this Court to the show-cause notice issued in form DRC 1 dated 15th June, 2022 and the order passed under Section 74(9) of the said Act and would submit that the entire demand was on account of reversal of input tax credit in terms of Section 16(4) of the said Act, for the

petitioner having not filed the returns within the time specified in the sub-Section. He would submit that the said Act has, however, subsequently been amended and sub-section 5 and sub-section 6 have been inserted by Finance (No. 2) Act, 2024 with effect from 1st July, 2017 and as such having regard to the newly inserted sub-Section 5, since the date of filing of the return in form GSTR 3B by the petitioner in within the outer time limit date of 30th November, 2021, the petitioner is entitled to the benefit of the said sub-Section, and the order passed under Section 74(9) of the said Act cannot be sustained inasmuch as the entire basis of such order stands removed. He has also drawn attention of this Court to the application for rectification dated 7th April, 2025 filed in terms of the notification dated 8th October, 2024 for availing benefit of sub-Section 5 of Section 16 of the said Act.

3. Unfortunately, the appellate authority did not consider the same and by a cryptic order, has rejected the appeal.
4. Mr. Agarwal, learned advocate appears for the CGST authorities. Having regard to the findings returned by the proper officer in the order passed under Section 74(9), he does not dispute the fact that the returns have been filed within the extended time limit provided for in Section 16(5) of the said Act.
5. Having heard the learned advocates appearing for the respective parties and noting that the proper officer

may not have committed any irregularity in passing the order inasmuch as an order is passed prior to insertion of Section 16(5) of the said Act, however, since Section 16(5) has been inserted with effect from 1st July, 2017, I am of the view that the petitioner is entitled to the benefit thereof, in any event, the petitioner has also in terms of the notification dated 8th October, 2024 had duly made the rectification application. The order of rejection of appeal appears to ignore the aforesaid. The order passed by the appellate authority, in my view, is perverse. The above order passed by the appellate authority if permitted to sustain would tantamount the failure of justice.

6. In the peculiar facts the order passed by the appellate authority as also by the proper officer under Section 74 (9) of the said Act is set aside.
7. All consequences shall follow.
8. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)