



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 5141/2023

M/s Gajrar Singh Ranawat, Through Its Proprietor Gajraj Singh Ranawat S/o Shri Ram Singh Ranawat, Aged About 63 Years, Having Its Village - Limbarwada, Post - Anat, Tehsil - Dhariyawad, District - Pratapgarh, Rajasthan - 313611. Gstin 08Aekpr5279J1Zq.

-----Petitioner

Versus

1. Union Of India, Through Ministry Of Finance (Department Of Revenue), Central Board Of Indirect Taxes And Customs, New Delhi.
2. Deputy Commissioner, Ac/cto Ward Circle - Pratapgarh, Bhilwara, Rajasthan.

-----Respondents

For Petitioner(s) : Mr. Vinay Kothari
Mr. Ayush Goyal

For Respondent(s) : Mr. Rajvendra Saraswat
Mr. Mukul Singhvi

**HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order

02/05/2023

This writ petition has been filed by the petitioner-firm challenging the validity of Section 16(2)(aa), Section 16(2)(c) of Central Goods and Service Tax Act, 2017 (for short 'the Act of 2017') and Rule 36(4) of the Central Goods and Service Tax Rules, 2017 (for short 'the Rules of 2017') with a further prayer to quash and set aside the order dated 27.12.2021 passed by the respondent No.2.

Learned counsel for the petitioner-firm has submitted that the petitioner-firm is in business of construction of roads and for



the said purpose, it requested the supplier to supply certain material on which GST is payable. It is also submitted that though the supplier has already paid GST on the supplied items, however, ignoring the same, the respondent No.2 vide order dated 27.12.2021 has passed an order for return of Input Tax Credit claimed by the petitioner.

Learned counsel Mr. Mukul Singhvi appearing for the respondent No.2 has frankly admitted that the impugned order dated 27.12.2021 is passed by the respondent No.2 ignoring the fact that the GST on the supplied items has already been paid by the suppliers. He has also submitted that the matter may be remanded to the respondent No.2 for afresh adjudication after taking into consideration the fact that the GST on the supplied items has already been paid by the suppliers.

At this stage, learned counsel for the petitioner has submitted that he does not want to press the reliefs prayed for declaring Section 16(2)(aa), 16(2)(c) of the Act of 2017 and Rule 36(4) of the Rules of 2017 as unconstitutional with a further prayer that the writ petition may be disposed of while quashing the impugned order dated 27.12.2021 with a direction to the respondent No.2 to pass a fresh order after providing opportunity of hearing to the petitioner.

Since learned counsel for the petitioner is not pressing the reliefs for declaring the provisions of Section 16(2)(aa), 16(2)(c) of the Act of 2017 and Rule 36(4) of the Rules of 2017 as unconstitutional, the order dated 27.12.2021 (Annexure-3) passed by the respondent No.2 is quashed and set aside. The respondent



No.2 is directed to pass a fresh order after providing opportunity of hearing to the petitioner.

The writ petition is disposed of accordingly.

Stay petition is also disposed of.

(YOGENDRA KUMAR PUROHIT),J

(VIJAY BISHNOI),J

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