



W.P.(MD)No.12965 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.12965 of 2022

and

W.M.P.(MD)No.9209 of 2022

M/s.Janapriyaa Super Market,
Represented by its Managing Partner Shahul Hameed,
No.50, Jawahar Street,
Karaikudi,
Sivagangai District,
Tamil Nadu - 630 001.

... Petitioner

Vs.

The Deputy Commissioner of Central Goods
and Services Tax and Central Excise,
Madurai - II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Raod,
Bibikulam, Madurai - 625 002.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for records pertaining to the impugned proceedings of the respondent in DIN: 20220359XO000000E223 dated 14.03.2022 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja Karthikeyan



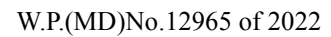
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ORDER

The impugned proceedings passed by the respondent in DIN: 20220359XO000000E223 dated 14.03.2022, is under challenge in the present Writ Petition.

2. The contention of the petitioner is that the petitioner is running Super Market in the name and style of 'M/s.Janapriyaa' registered with the respondent Department and regularly filing the monthly returns under Goods and Service Tax Act (in short 'GST'). Based on the scrutiny and verification of GSTR-3B returns filed for the financial year July '2017 to March '2018, the respondent's Office issued notice dated 14.06.2021. The show cause notice was issued on the ground that the petitioner have wrongly availed the Input Tax Credits (in short 'ITC') to the tune of Rs.24,81,960/- (CGST of Rs.12,27,669/- and TNGST of Rs.12,27,669/- and IGST of Rs.26,622/-) and short payment of TNGST of Rs.4,26,990/- on the supplies, during the assessment period. Thereafter, the petitioner have filed objections on 27.07.2021, rejecting the proposal to reverse the ITC not reflected in GSTR 2A. In the impugned notice, it is stated that due to



3. A personal hearing was conducted on 09.03.2022 with the representative of the petitioner, namely, R.Ramesh, Tax Officer. However, his submissions were not properly considered. Further, the delay in the payment of the tax was due to suppliers not conversant with the law. The petitioner has not made any payment at the initial stage from 2017 to 2018.



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4. At this stage, the learned counsel for the petitioner brought to the notice of this Court that a press release was issued by the Central Board of GST council on 04.05.2018. In the said press release, it is mentioned that 'there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.'

5. Further, the learned counsel relied on Notification No.40/2021-Central Tax issued by the Central Board of Indirect Taxes and Customs and the relevant portion is extracted hereunder:

"2. In the central Goods and Services Tax Rules, 2017,

(i) In rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely:-



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"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under Section (1) of Section 37 unless:-

*(a) the details of such invoices or debit notice have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and*

*(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60."*

6. Thereafter, the learned counsel relied upon the order passed by this Court in W.P.(MD)Nos.2127 of 2021 etc., batch on 24.02.2021, wherein, this Court referring to the press release dated 04.05.2018, had given positive direction to the petitioner therein and the same benefit is to be given to the petitioner herein.

7. It is seen from the records that a show cause notice was issued to the petitioner and thereafter, the petitioner sent a reply on 27.07.2021 and



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the personal hearing was conducted on 09.03.2022. After considering the objections, a detailed order has been passed by the Adjudicating Authority. Without filing an appeal before the concerned authority, the petitioner has approached this Court by way of this Writ Petition. The Hon'ble Apex Court and this Court, time and again, held that if there is an alternative and efficacious remedy of appeal, the petitioner can very well approach the concerned authority. Hence, the petitioner is at liberty to approach the Appellate Authority by raising the points. The delay in filing appeal if any to be considered favourably.

8. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

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