**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 28.08.2024

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.4811 of 2022
and
W.M.P.No.4917 of 2022

M/s.Umashankar Alloys Private Limited,
Represented by its Director
M.Nandakumar ... Petitioner

Vs.

The Assistant Commissioner of Central Tax,
Hosur II Division, SIPCOT,
Hosur – 635 126. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the Order-in-Original No.02/2022 (DIN:20220259XP000000C248) dated 01.02.2022 and quash the same as unsustainable in law, for mere procedural delay, the legitimate right to avail the ITC cannot be denied and opposed to the object of avoiding cascading effect in taxation.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.K.Mohanamurali
Senior Panel Counsel

**ORDER**

In this writ petition, the petitioner has challenged the impugned Order-in-Original No.02/2022 (DIN: 20220259XP000000C248) dated 01.02.2022.

2. The dispute pertains to the Assessment Years 2017-2018 and 2018-2019. The dispute primarily relates to the delayed availing of Input Tax Credit contrary to Section 16(4) of the respective GST enactments.

3. Learned counsel for the petitioner would place reliance on Clause 114 of the Finance (No.2) Bill, 2024, pursuant to the recommendation of the GST Council in its 53rd Meeting held on 22.06.2024. It is submitted that the intention of the Parliament is to allow the benefit of Input Tax Credit, not to deny it.

4. Already, this Court has taken a consistent stand that under similar circumstances, the matter be remitted back to the respondent to pass a fresh order in the light of the amendment to Section 16 of the respective GST enactments.

5. As a consequence of the above amendment, Sections 16(5) and 16(6) of the Central Goods and Services Tax (CGST) Act have been incorporated. Similar amendments are expected by the Tamil Nadu State Legislature to insert

Sections 16(5) and 16(6) of the Tamil Nadu Goods and Services Tax Act, 2017.

6. Even otherwise, as per the decision of the Hon'ble Supreme Court in **Formica India Division, Bombay, Burma Trading Corporation Limited** Vs. **Collector of Central Excise and others**, 1995 Supp (3) SCC 552/1995 (77) ELT 511, once the tax is demanded, the benefit of Input Tax Credit has to be granted.

7. Under these circumstances, the Impugned Order can be set aside and the case be remitted back to the respondent to pass a fresh order.

8. Therefore, the Impugned Order is set aside and the case is remitted back to the respondent to pass fresh order on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order after suitable amendments are made to the Tamil Nadu Goods and Services Tax Act, 2017.

9. This Writ Petitions stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

**28.08.2024**

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner of Central Tax,
Hosur II Division, SIPCOT,
Hosur – 635 126.

**C.SARAVANAN, J.**

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and
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