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W.P.Nos.10752 of 2024, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

**W.P.Nos.10752, 16110, 18146, 22836, 22923, 22979, 22986,
23002, 23044, 28773, 11880 and 11886 of 2024**

and

**W.M.P.Nos. 17642, 17643, 19939, 19940, 24880, 24881, 24973,
24975, 25052, 25055, 25063, 25064, 25085, 25086, 25133, 15134,
31395, 12971, 12973, 12976 and 12977 of 2024**

W.P.No.10752 of 2024:

M/s.Sri Sairam Tractors,
rep. by its Proprietor,
Mr.D.Vetrivel

...Petitioner

Vs.

1. Union of India,
represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

2. Central Board of Indirect Taxes and Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

3. The Commissioner,



W.P.Nos.10752 of 2024, etc.

Under Secretary to the Government of India,
Central Board of Indirect Taxes and Customs,
Ministry of Finance.

4. The Superintendent of GST & Central Excise,
Villupuram Range, Villupuram Division,
Old Telephone Exchange Building,
BSNL Campus, Hospital Road,
Villupuram-605 602.

...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the impugned proceedings of the 4th respondent passed in Order-in-Original No.12/2023-GST (Supdt) dated 20.12.2023 and in DIN No.20231259XL110000C6CC and quash the same as passed contrary to the provisions of the Central Goods and Services Taxes Act, 2017 read with provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and contrary to the principles of natural justice.

For Petitioner: Mr.P.Rajkumar

For Respondents : Mr.Sai Srijan Tayi, Sr.S.C.



W.P.Nos.10752 of 2024, etc.

COMMON ORDER

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2. As the issue involved in all these Writ Petitions, is identical in nature and the relief sought thereunder, is interconnected, these Writ Petitions are being disposed of vide this Common Order.

3. When these Writ Petitions are taken up for hearing, the respective learned counsel for the petitioners and learned Senior Standing counsel for the respondents, would submit that the issue involved in the present Writ Petitions, has been squarely covered by the common order of this Court, dated 17.10.2024 passed in W.P.Nos.25081 of 2023, etc., batch, wherein,



W.P.Nos.10752 of 2024, etc.

this Court has categorically held in paragraphs 9 to 12 as under:

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“9. The petitioners in all these Writ Petitions are registered dealers on the files of the respondent-Department under the provisions of the Goods and Service Tax Act, 2017/CGST Act 2017. Though the petitioners have filed GSTR-1 returns in time, however, insofar as claim of ITC is concerned, since the petitioners were faced with certain difficulties, such as Financial constraints (as there was complete lock down due to outbreak Covid-19) health related ailments, fire accidents, they were unable to file GSTR-3B returns, which prompted them not raising their claim ITC in time before the prescribed date. Whereas, the respondent-Department without considering such vital aspects and that reasons for the delay is not deliberate, issued the show cause notices to the petitioners, proposing to reverse the ITC availed and went to the extreme level of confirming the proposals contained in the show cause notices by passing the impugned orders, whereby, the claim made by the petitioners for ITC was reversed and the petitioners have been directed to tax/penalty/interest. Aggrieved against the impugned orders, the petitioners are before this Court by way of present Writ Petitions seeking for setting aside the impugned orders.



W.P.Nos.10752 of 2024, etc.

10. After the filing of these Writ Petitions, certain development took place, i.e. that 53rd GST Council Meeting was held on 22.06.2024, and during the said Meeting, the GST Council recommended for extension of the deadline for availing ITC on any invoice or debit note under Section 16(4) of the CGST Act and this extension would be applicable to any GSTR-3B returns filed for the Fys 2017-18, 2018-19, 2019-20 and 2020-21 with a new deadline deemed to be as "30.11.2021", to which, the Presidential Assent was also obtained by the Government of India on 16.08.2024, whereby, the financial proposals of the Central Government for the Financial Year 2024-25 was given effect to vide Finance Act, (No.2) of 2024, and in view of the aforesaid enactment, the Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs, issued a Notification, bearing No.17 of 2024-Central Tax, dated 27.09.2024, pursuant to which, a Circular No.237/31/2024-GST was issued by the Central Board of Indirect Taxes and Customs, which was addressed to all the Principal Chief Commissioners /Chief Commissioners/Principal Commissioners/Commissioners of Central Tax (All), thereby, clarifying the issues regarding implementation of provision of sub-section (5)



W.P.Nos.10752 of 2024, etc.

and sub-section (6) in Section 16 of CGST Act, 2017, the impugned orders are no longer sustainable and liable to be quashed. In this context, it would be apposite to refer to both Section 16(4) of the CGST Act, 2017, as well as amendment made to Section 16 (4) by interpolations of sub-sections 16 (5) and (6), and by insertion of sub-section (5) to Section 16, which are extracted herein under:-

Section 16 (4)

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

Section 16 (5) :-

"Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered persons shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021."

10.1 Thus, a perusal of above Section 16 (5) makes it clear that 'notwithstanding anything contained in sub-



W.P.Nos.10752 of 2024, etc.

section 4, referred to above, in respect of any invoice or debit note for supply of goods or services or both pertaining to the Fys 2017-18 to 2020-21, the registered persons shall be entitled to take ITC in any return under section 39 which is filed upto the 30th day of November, 2021.

10.2 Thus, this Court considering the fact that the issue involved in all these Writ Petitions is only with regard to the availment of ITC, which is barred by limitation in terms of Section 16 (4) of the CGST Act, and in the light of the subsequent developments took place, whereby, Section 16 of the CGST Act was amended and sub-section (5) was inserted to Section 16, which came into force with retrospective effect from 01.07.2017, the petitioners are entitled to avail ITC in respect of GSTR-3B filed in respect of FYs 2017-18, 2018-19, 2019-20 and 2020-21 as the case may be, on or before 30.11.2021, is inclined to quash the impugned orders.

11. Accordingly, this Court passes the following orders.

i) The orders impugned in all Writ Petitions are quashed insofar as it relates to the claim made by the



W.P.Nos.10752 of 2024, etc.

petitioners for ITC which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017 but, within the period prescribed in terms of Section 16 (5) of the said Act.

ii) Therefore, the respondent-Department is restrained from initiating any proceedings against the petitioners by virtue of the impugned orders based on the issue of limitation.

iii) In view of the fact that the impugned orders are quashed, the respondent-Department is directed to take immediate steps towards de-freeze of the concerned petitioners bank accounts, which have been freezed in furtherance of the impugned orders, by sending intimation to the concerned bankers.

iv) In the event, in the interregnum, i.e. during the pendency of these Writ Petitions, if any orders are proposed to be passed towards recovery, same shall be dropped immediately upon production of the order copy by the petitioners, in whichever case, where, there is no interim order.

v) It is also made clear that if at all, if there is any tax amounts were collected from the petitioners based on the impugned assessment orders from the cash ledgers/credit ledgers of the petitioners concerned, the



same shall be refunded to them or by means of orders of this Court or even in the absence of any order from this Court, if any amount is deposited either in the cash ledgers/credit ledgers of the petitioners concerned, the same is permitted to be utilized/adjusted by the petitioners towards payment of future tax.

vi) Insofar as the apprehension expressed by the learned Additional Advocate General for the respondent-Department that in certain Writ Petition apart from the issue on limitation, challenges have also been made to the order related to issues such as discrepancies in availing the ITC/wrong availment of ITC/excess claim of ITC/Fake ITC claim, as the case may be, or such other issues, liberty is be granted to the respondent-Department to proceed against the assessee/petitioners in furtherance of the impugned orders in accordance with law.

12. In the result, all the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.”

4. Therefore, the learned counsel for the petitioners would submit that the above said order will hold good for the present Writ Petitions also



W.P.Nos.10752 of 2024, etc.

and hence, prayed to dispose of the Writ Petitions. The learned Senior

Standing counsel for the respondents would fairly accede to the same.

5. In view of the above, this Court passes the following:

i) The orders impugned in all Writ Petitions are quashed insofar as it relates to the claim made by the petitioners for ITC which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017 but, within the period prescribed in terms of Section 16 (5) of the said Act.

ii) Therefore, the respondent-Department is restrained from initiating any proceedings against the petitioners by virtue of the impugned orders based on the issue of limitation.

iii) In view of the fact that the impugned orders are quashed, the respondent-Department is directed to take immediate steps towards de-freezure of the concerned petitioners bank accounts, which have been freezed in furtherance of the impugned orders, by sending intimation to the concerned bankers.

iv) In the event, in the interregnum, i.e. during the



W.P.Nos.10752 of 2024, etc.

pendency of these Writ Petitions, if any orders are proposed to be passed towards recovery, same shall be dropped immediately upon production of the order copy by the petitioners, in whichever case, where, there is no interim order.

v) It is also made clear that if at all, if there is any tax amounts were collected from the petitioners based on the impugned assessment orders from the cash ledgers/credit ledgers of the petitioners concerned, the same shall be refunded to them or by means of orders of this Court or even in the absence of any order from this Court, if any amount is deposited either in the cash ledgers/credit ledgers of the petitioners concerned, the same is permitted to be utilized/adjusted by the petitioners towards payment of future tax.

vi) Insofar as the apprehension expressed by the learned Additional Advocate General for the respondent-Department that in certain Writ Petition apart from the issue on limitation, challenges have also been made to the order related to issues such as discrepancies in availing the ITC/wrong availment of ITC/excess claim of ITC/Fake ITC claim, as the case may be, or such other issues,



W.P.Nos.10752 of 2024, etc.

liberty is be granted to the respondent-Department to proceed against the assessee/petitioners in furtherance of the impugned orders in accordance with law.

6. Accordingly, all the present Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.10.2024

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W.P.Nos.10752 of 2024, etc.

Krishnan Ramasamy, J.

sd/suk

W.P.No.10752 of 2024 etc (batch)

22.10.2024