



W.P.Nos.11637 of 2020 & 27562 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2023/20.09.2023

PRONOUNCED ON : 09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.11637 of 2020 & 27562 of 2023
and
WMP.Nos.14267 of 2020, 27010 & 27011 of 2023

B.Sivakumar

.. Petitioner in both W.Ps.

vs.

1. The State Officer,
Adjudication Wing,
Office of the Joint Commissioner (ST) Intelligence,
Erode Division,
No.161, C.t.Building,
Meenashisundaram Salai,
Erode.

2. Kotak Mahindra Bank,
Branch Office,
219, Arunachalam Road,
D.B Road, R.S.Puram,
Coimbatore 641 002.

... Respondent in both W.Ps.

Prayer in W.P.No.11637 of 2020 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records



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relating to the order of the 1st respondent Order No.ERD-009-20190925 dated 05.05.2020 in respect of the periods from July 2017 to March 2018 and April 2018 to March 2019 and quash the same.

For Petitioner : Mr.T.K.Bhaskar

For R1 : Mr.V.Prashanth Kiran
Government Advocate

For R2 : Mr.P.Elayaraj Kumar
for M/s.Ramalingam & Associates

Prayer in W.P.No.27562 of 2023 : 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 of the 1st respondent Order No.ERD-009-20190925 dated 05.05.2020 in respect of the periods from April 2018 to March 2019 and quash the same.

For Petitioner : Mr.T.K.Bhaskar

For Respondent : Mr.V.Mahalingam
Senior Standing Counsel



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COMMON ORDER

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W.P.No.11637 of 2020 has been filed by the petitioner for a composite relief to quash the Impugned Orders both dated 05.05.2020 for the Assessment Years 2017-2018 & 2018-2019.

2. Considering the fact that the petitioner has filed a composite writ petition, Court had given liberty to the petitioner to file a separate writ petition for the separate Assessment Year 2018-19, so that separate orders can be passed based on the available records that have been filed by the petitioner for the Assessment Year 2017-2018 in W.P.No.11637 of 2020, if required. Thus, **W.P.No.27562 of 2023** was filed later by the petitioner

3. The Impugned Orders both dated 05.05.2020 for the Assessment Years 2017-2018 & 2018-2019 preceded a Show Cause Notice dated 20.11.2019 bearing reference:GSTIN:33ALPPS1578K1ZG/2017-2018 under Section 74(1) of the Central Goods & Services Tax Act, 2017 (CGST Act, 2017) and Tamil Nadu Goods and Service Tax Act, 2017 (TNGST Act, 2017). Relevant portion



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of the Show Cause Notice dated 20.11.2019 reads as under:-

“As per the order of the Joint Commissioner (ST) (Intelligence), Erode vide reference 1st cited, your place of business was visited on 27.09.2019 for inspection, and ascertained that your business premises was held under the custody of Tvl.Kotak Mahindra Bank Limited, Coimbatore for their loan recovery procedure under SARFAESI Act. Hence, we could not conduct the inspection to the premises.

I summoned you regarding the above matter, you came to office on 09.10.2019 at 6.00 pm and you gave written statement that all the records relating to the assessment year 2017-2018 and 2018-2019 were available inside the Office at the business premises itself.

Based on your statement, I requested the bank officials to handover the records relevant to inspection under GST Act.

I have verified your business premises on 08.11.2017 along with the bank officials. Then, we found no records relating to the assessment year 2017-2018 and 2018-2019 under GST accounts and related documents on Tvl.Shri Sendhur Agro and Oil Industries, i.e., Bought Note Purchase Invoices for Un-Regd. Purchase, Purchase and Sale invoices, Lorry Receipt, Input Tax Credit Ledger, RCM paid for movement of goods and also April to June 2017 (Vat returns).

As per Rule 36 read with Section 31 of the SGST Act, the registered person has to retain documents related



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to inward supplies as well as outward supplies in the place of business. In the absence of inward and outward supply documents, I propose to reject the entire Input Tax Credit under CGST Act and SGST Act 2017.

In view of the above circumstances, you are contravened the above said TNGST Act, 2017 as well as CGST Act, 2017, I propose assessment under Section 74(1) of the TNGST Act and also propose penalty under Section 122 read with 74(1) of the TNGST Act as follows:-

Table - 1

Year	IGST Amount Rs	CGST Amount Rs	SGST Amount Rs.	Total Amount Rs
ITC Claimed as per 3-B (2017-2018)	Rs.6,56,950/-	Rs.36,54,900/-	Rs.36,54,900/-	Rs.79,66,750/-
Tran-1 ITC	0	0	Rs.10,83,155/-	Rs.10,83,115/-
Total	Rs.6,56,950/-	Rs.36,54,900/-	Rs.47,38,015/-	Rs.90,49,865/-

Further, you are requested to pay the entire Input Tax Credit availed for the year 2017-18 with appropriate interest under Section 50 (3) of the TNGST Act, 2017 as detailed below:

Calculation of Interest at 24%
ITC Claimed as per 3-B (2017-2018)



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Table – 2

Month	IGST	CGST	SGST	TOTAL	Date of Filing	No of days	Interest @ 24%		
							IGST	CGST	SGST
July.17	0	11660	11660	23320	28.08.2017	815	0	6248	6248
Aug.17	91798	80993	80993	253784	11.10.2017	771	46538	41060	41060
Sep.17	15474	506750	506750	1028974	20.12.2017	701	7132	233577	233577
Oct.17	142853	91955	91955	326763	15.02.2018	643	60397	38878	38878
Nov.17	71719	96597	96597	264913	15.02.2018	643	30322	40841	40841
Dec.17	277200	721556	721556	1720312	15.02.2018	643	117199	305070	305070
Jan.18	55100	921349	921349	1897798	31.03.2018	600	21738	363491	363491
Feb.18	0	693787	693787	1387574	31.03.2018	600	0	273713	273713
Mar.18	2806	530253	530253	1063312	18.02.2019	276	509	96230	96230
Total	656950	3654900	3654900	7966750			283836	1399109	1399109
							30,82,053		

TRAN-1-ITC

Table-3

Month	IGST	CGST	SGST	TOTAL	Date of Filing	No of days	Interest @ 24%		
							IGST	CGST	SGST
July.17	0	0	1083115	1083115	20.08.2017	815	0	0	580431
							5,80,431		

*Total amount of Interest = Rs.30,82,053/- + Rs.5,80,431/- =
Rs.36,62,484/-*

*Penalty is also proposed to be levied at 100% on the tax
dues as per Section 74(1) of TNGST Act, 2017*



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*Total Tax dues = Rs.79,66,750 + Rs.10,83,115 =
Rs.90,49,865.00 @ 100% Penalty due = Rs.90,49,865.00.*

*Hence, you are requested to pay the amount of
Rs.90,49,865 with interest and Penalty within 30 days from
the date of receipt of this notice.*

*Objection if any of the above proposal, you are requested
to appear in person on or before 20.12.2019 at 11.00 am
at my chamber along with original documents with two
sets of Xerox copy and soft copy Failing which, above
proposal will be confirmed according to law without
further intimation.”*

4. The show Cause Notice also calculates the interest payable at 24% on the Input Tax Credit availed by the petitioner for which there were no records available to substantiate with the documents.

5. The notice also proposed 100% penalty on the Input Tax Credit wrongly availed during July 2017 to March 2018.

6. It appears that during the aforesaid period, the petitioner effected inter-state supply as also local supply of goods attracting tax under the provisions of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as IGST Act), 2017 the Central Goods and Services Act, 2017 (hereinafter referred



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to as CGST Act) 2017 and State Goods and Services Act, 2017 (hereinafter referred to as SGST Act). 2017. [collectively referred to as the respective GST Enactments]. The petitioner appears to have availed input tax credit utilized the input tax credit for discharge of the tax liability under the respective GST Enactments.

7. The petitioner replied to the above Show Cause Notice dated 20.11.2019 and on 19.12.2019 and had requested the respondent to permit the petitioner to cross- examine the officers from the second respondent who had put the petitioner's mills/factories under lock and seal on 16.05.2019 under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 read with Security Interest (Enforcement) Rules, 2002.

8. The petitioner has questioned the invocation of Section 74(1) of TNGST Act and submits that the Show Cause Notice has not invoked similar provisions under Section 74(1) of the CGST Act, 2017 and therefore, demand has to be restricted only to the alleged irregularities of availing Input Tax Credit



9. This objection is overruled as the provisions are pari materia.

10. That apart , dispute in these two writ petitions do not directly deal with wrong utilization of input tax credit rather availed. The dispute relates to wrong availing of input tax credits by the petitioner under the provisions of the respective GST Enactments.

11. The petitioner has also found fault with the respondents in not complying with the requirements of Section 67 of the TNGST Act, 2017 during the visit made on 08.11.2019 in absence of the petitioner.

12. It was further stated by the petitioner that in terms of Section 71(1) of the TNGST Act, 2017 that any officer authorized by a proper officer not below the rank of Joint Commissioner can have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and



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such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

13. It is submitted that sub-clause(2) to Section 71 of the TNGST Act, 2017 contemplates safeguards for the following:-

- i. Such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;*
- ii. Trial balance or its equivalent;*
- iii. Statements of annual financial accounts, duly audited, wherever required;*
- iv. Cost audit report, if any, under Section 148 of the Companies Act, 2013;*
- v. The income-tax audit report, if any, under Section 44AB of the Income Tax Act, 1961; and*
- vi. Any other relevant record,*

For the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant."

14. It was submitted that since the business premises of the petitioner was under the lock and seal by the second respondent and therefore the



petitioner was unable to give a proper reply on the merits of the case.

15. That apart, it was submitted that no Mahazar of Panchanama was prepared by the bank during the takeover process as was required under Rule 4 of the Security Interest (Enforcement) Rules, 2002.

16. Specifically, it is submitted that the second respondent ought to have intimated by notice enclosing the Panchanama drawn in Appendix I and the inventory made in Appendix II and since there was a violation of the procedure followed in complying with the requirements of Rule 4 of the Security Interest (Enforcement) Rules, 2002, the impugned proceeding without permitting the petitioner to cross-examine the officials of the second respondent bank has to be interfered with.

17. That apart, it is submitted that as far as the Assessment Year 2018-2019 is concerned, neither a Show Cause Notice was issued to the petitioner nor a reply was called for from the petitioner and therefore on this count also the Impugned Orders are liable to be quashed.



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18. Apart from reiterating the other contentions that there has been a mandatory violations of principles of natural justice for the Show Cause Notice on the same date which has been referred to in both orders. Personal hearing was fixed on various dates and the official from the second respondent were required to be present for cross-examination. However, after summoning the second respondent/Bank on the hearing which was the final summon issued on 02.03.2020. The first respondent has dispensed with the cross-examination of the second respondent/Bank officials.

19. That apart, it is also stated in the summons issued on 02.03.2020 for fixing the hearing on 16.03.2020 at 11.30 a.m. The respondent had also pre-determined the issue by calling upon the petitioner to reverse the input tax credit which was availed by the petitioner for the Assessment year 2017-2018 along with interest on or before 16.03.2020 and that penalty was also imposed under Section 74(1) of the respective Act for willful default of wrong input tax credit.



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20. It is further submitted that despite the officials of the second respondent, being summoned for cross-examination also, the petitioner was not allowed to cross examine them. It is submitted that if cross-examination was allowed, the petitioner would have established that all the documents for proving that Input Tax Credit on invoices were validly availed for deciding the tax liability.

21. In this connection, the learned counsel for the petitioner has also drawn attention to Paragraph 21 of the counter affidavit filed in support of the first respondent, wherein, it has been wrongly stated that on 08.11.2019 officials from the Intelligence Department verified the records and took with them certain documents and acknowledged the same in GST INS-02.

22. The learned counsel for the petitioner has placed reliance on the following decisions:-

- i. ***Commissioner of Income Tax vs. Dharam Pal Prem Chand Limited, MANU/DE/8685/2007;***
- ii. ***R.W.Promotions Private Limited vs. Assistant***



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Commissioner of Income Tax and Others,
MANU/MH/2368/2015;

iii. ***Commissioner of Income Tax*** vs.
S.M.Aggarwal, MANU/DE/7467/2007;

iv. ***Andaman Timber Industries*** vs. ***Commissioner***
of Central Excise, Kolkata-II,
MANU/SC/1250/2015;

v. ***State of Kerala*** vs. ***K.T.Shaduli Yusuff and***
Others, MANU/SC/0303/1977;

vi. ***SRS Mining*** vs. ***The Union of India and***
Others, MANU/TN/7563/2022.

23. On behalf of the first respondent, it is submitted that the petitioner has an alternate remedy before the Appellate Commissioner under Section 107 of the TNGST Act, 2017. A specific reference is made to the following decisions:-

i. Assistant Collector of Central Excise, Chandan
Nagar, West Bengal vs. ***Dunlop India Limited and***
Others, (1985) 1 SCC 260;

ii. United Bank of India vs. ***Satyawati Tandon and***
Others, (2010) 8 SCC 110.

24. It is the specific case of the first respondent that the notice was issued to the petitioner for the respective Assessment Years on 25.11.2019 and



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called upon the petitioner to respond to the notices, however the petitioner failed to file a proper reply in time.

25. It is submitted that the petitioner later filed a reply on 27.12.2019 and orders were passed after the above reply was taken on file.

26. It is further submitted that under Section 70 of the TNGST Act, 2017, the “Proper Officer” has power to summon any persons to give any evidence or to produce any document. In this case, the second respondent co-operated with the first respondent and opened the premises for conducting the investigation. Hence, a copy of the Panchanama was drawn on 16.05.2019.

27. It is further case of the second respondent that the request for cross-examination of the officers of the second respondent was merely a ruse to scuttle the assessment proceedings by taking advantage of the collateral proceedings initiated by the second respondent under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 read with Security Interest (Enforcement) Rules, 2002.



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28. It is submitted that the burden of proof to establish that the Input Tax Credit was validly availed lies with the assessee in terms of Section (155 blank) of CGST Act, 2017 and therefore in absence of proper documents to establish that the credit was validly availed during the respective period, Input Tax Credit that was availed by the petitioner was liable to be reversed and consequently tax was payable in cash together with interest.

29. The learned counsel for the second respondent further submits that since the officials have taken away the required documents pertaining to the petitioner from the Secured Asset on 08.11.2019 and also heard from second respondent on their personal appearance before the authority as per their own show cause notice dated 07.01.2010, the adjudicating authority revoked the order of cross examination of the witness of the second respondent.

30. On a perusal of the allegation made by the petitioner in paragraph 3D and 6F are read together, it would be clear that the petitioner is making false allegations before this Court. In paragraph 3D , no Panchanama was prepared



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and executed at the time of taking possession by the second respondent submitted the Panchanama on 27.02.2020. Thus, it is very clear that the petitioner is making contradictory statements in the affidavit.

31. It is further submitted that the petitioner is not aware of the movables that are present in the premises. As aforesaid, when the officials of the first respondent inspected the premises of secured asset on 08.11.2019 in the presence of second respondent and after examining the documents, the officials of the first respondent had taken few documents for perusal and then called for the rest of the documents from the petitioner. As they have personally examined the second respondent when they called for personal appearance before the authority vide their show cause notice dated 07.01.2020, first respondent dropped the idea of cross examining the officials of the Bank. When this being the fact, the petitioner is making false allegations before this Court. The cross examination of the bank officials was dropped by the Adjudication officer of the first respondent as there was no necessity.

32. It is further submitted that the Panchanama was prepared at the time



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of taking possession of the property, he should agitate the same before the Debt Recovery Tribunal stating that the respondent had not followed the procedures as contemplated under the Act.

33. The case of the petitioner appears to be that for the Assessment year 2018-2019, no notice was issued to the petitioner and therefore the order has to go.

34. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first respondent and the learned counsel for the second respondent. I have perused the impugned orders. I have also perused the affidavit filed in support of the present writ petitions and the counter filed by the first and second respondents.

35. There is no doubt that the impugned orders have been passed in violation of principles of natural justice in as much as, the petitioner was not



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allowed to cross examine the officers of the 2nd respondent's who had taken possession of the factory of the petitioner under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 read with Security Interest (Enforcement) Rules, 2002.

36. Therefore, on this short point alone impugned orders are liable to be set aside and the cases have remitted back to the 1st respondent to pass fresh orders on merits after giving the petitioner an opportunity to cross examine the officers of the 2nd respondent and after being heard.

37. In this case, the petitioner has availed ITC under the provisions of the respective GST enactments namely IGST 2017, CGST 2017 and NGST 2017 for a sum of Rs.79,66,750/-as detailed in the show cause notice content of which has been extracted above in Table-1.

38. Apart from the input tax credit, the petitioner has also availed a transitional credit of the Value Added Tax lying unutilize, in terms of Section 141 and 142 of the TNGST 2017 for a sum of Rs.10,83,115/-



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39. In all, a sum of Rs.90,49,865/- was sought to be denied to the petitioner in the show cause notice that was issued to the petitioner on 20.11.2019. Apart from the input tax credit and transitional credit on the aforesaid amounts, the show cause notice issued also proposed to levy interest under the provisions of the respective GST Enactments for the Assessment Year 2017-18.

40. Denial of transitional credit under the aforesaid provisions of the respective GST Enactments can be justified only if the petitioner did not have unutilised credit of Rs.10,83,115/- as on 30.6.2017. This would have been reflected in the Returns of the petitioner which the petitioner would have filed before the Commercial Tax Department under the provisions of the Tamil Nadu Value Added Tax Act, 2006. This aspect can be verified by the Department by



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drawing informations from its archives under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

41. If only such credit viz., transitional credit was not available on 30.06.2017, such transitional credit can be denied. This information can be furnished the petitioner before passing a fresh order.

42. Therefore, before proceeding to deny such credit, the 1st respondent is directed to examine the legacy records from its archives insofar as the claim of the petitioner for the transitional credit of Rs.10,83,115/- notwithstanding the fact none of the documents are traceable on account of the steps taken by the 2nd respondent under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest (Enforcement) Rules 2002.

43. As far as the denial of input tax credits are concerned, notwithstanding the fact that the documents are not available with the petitioner



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as is required under Section 16(3) of the respective GST Enactments read with Section 155 of the respective GST Enactments in the peculiar facts and circumstances of the case, such credit can be allowed.

44. The fact remains that, the petitioner would have availed input tax credits on the supplies affected by the supplier of inputs/services to the petitioner. The supplier would have filed Form GSTR-1 as is contemplated under Rule 59 of the Central Goods and Service Tax Act, 2017 and Tamil Nadu Goods and Service Tax Act, 2017.

45. As per Rule 59 (3) of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017, as made applicable to IGST Act, 2017, the details of output supplies by the supplier in Form GSTR-1 would have been available to the petitioner electronically in Part A of Form GSTR-2-A.



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46. Similarly, details of input supplies added, corrected or deleted by the recipient like the petitioner in its form GSTR-2 under Section 38 would have been made electronically available to the supplier like the petitioner in Form GSTR-1A through the common portal. The supplier was to either accepted or rejected the modification made by the recipient like the petitioner and Form GSTR-1 furnished earlier by the supplier would have stood amended to the extent of modification.

47. Similarly, as a recipient of tax paid supplies, the petitioner was required to furnish the details of input supplies of goods or services or both received during a tax period under Sub-section (2) of the respective GST Enactments of Section 38, on the basis of the details contained in Part-A , Part B and Part C of Form GSTR-2A , and would have prepared such details as specified in Sub-Section 1 of Section 38 of the respective GST Enactments and furnished the same in GSTR-2 electronically through the common portal, either directly or from the facilitation Centre notified by the Commissioner, after including therein the details of such other input supplies, if any, required to be furnished under Section 38 (2) of the respective GST enactments.



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48. As the registered person, the petitioner would have furnished the details under Section 38 (5) of the respective GST Enactments in form in GSTR-2. Through the common portal after the due date of filing of form GSTR-1.

49. Rules 59 & 60 of the respective GST Enactments as they stood during the period in dispute are reproduced below:-.

Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017	Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017
(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner. (2) The registered persons required to	(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter. [60. Form and manner of ascertaining details of inward supplies.- (1) The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common



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Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017

furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months, - using invoice furnishing facility (hereafter in this notification referred to as the -IFF?) electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month. [Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.]131

[Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021.]132

- (3) The details of outward supplies furnished using the IFF, for the

Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017

portal, as the case may be

- (2) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.
- (3) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR 2A electronically through the common portal.
- (4) The details of tax deducted at source furnished by the deduct or under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal.
- (5) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR 2A electronically through the



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Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017	Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017
first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter. (4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the— (a) invoice wise details of all – (i) inter-State and intra-State supplies made to the registered persons; and (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons; (b) consolidated details of all – (i) intra-State supplies made to unregistered persons for each rate of tax; and (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax (c) debit and credit notes, if any,	common portal. (6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal. (7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of – (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of



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Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017	Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017
issued during the month for invoices issued previously. [(5)The details of outward supplies of goods or services or both furnished using the IFF shall include the – (a) invoice wise details of inter-State and intra-State supplies made to the registered persons; (b) debit and credit notes, if any, issued during the month for such invoices issued previously.]133] 134 [(6)Notwithstanding anything contained in this rule, - (a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months; (b) a registered person, required to furnish return for every quarter under the proviso to subsection (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37	FORM GSTR-1 for the month; (ii)the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to subsection (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,- (a)for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter; (b)for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details



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Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017	Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017
in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;	using the IFF for the second month of the quarter; (c)for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM (iii)the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month. 8)The Statement in FORM GSTR-2B for every month shall be made available to the registered person,- (i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section



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Rule 59 of the Central Goods and Service Tax Rules, and Tamil Nadu Goods and Service Tax Rules, 2017	Rule 60 of the Central Goods and Service Tax Rules, 2017 and Tamil Nadu Goods and Service Tax Rules, 2017
	39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later; (ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.]

50. Proviso to Section 16 (2) of the Tamil Nadu Goods and Service Tax Act, 2017 and the Central Goods and Service Tax Act, 2017 contemplates that where a recipient fails to pay the supplier of the goods or services or both, other than the supply on which tax is payable on reverse charge basis, the amount towards the value of supply along with the tax payable thereon, within the period of 180 days from the date of issuance of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to



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his output tax liability, along with interest thereon, in such manner as may be prescribed.

51. This is something which the petitioner can independently establish from the bank accounts regarding proof of payment of amounts to the suppliers.

Section 16 of the respective GST Enactments are reproduced below:-

Section 16 of Respective GST Enactments Act, 2017

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

[Explanation.]—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—



Section 16 of Respective GST Enactments Act, 2017

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.;
- (c) subject to the provisions of 2 [section 41 or Section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such



Section 16 of Respective GST Enactments Act, 2017

manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- (3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.
- (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 due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or 1 [*****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under Section 39 for the month of September, 2018 till the due date of furnishing of the return under the said Section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of Section 37 till the due date for furnishing the details under sub-section (1) of said Section for the month of March, 2019.]



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52. The only other issue that needs to be verified is whether Rule 37 of the respective Goods and Service Tax Rules, 2017 were satisfied or not. If the petitioner had availed input tax credit on any goods or services or both but failed to pay the supplier thereof, for the value of such supply along with the tax payable thereon, within the time limit specified under Section 16(2), the petitioner was required to furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in Form GSTR-2 for the month immediately following the period of 180 days from the date of issue of the invoice. This would require verification for the electronic records of the petitioner. Rule 37 of the Central, Goods and Service Tax Rules 2017 and Tamil Nadu Goods and Service Tax Rules, 2017 are reproduced below:-

<i>Rule 37 of the Central, Goods and Service Tax Rules 2017</i>	<i>Tamil Nadu Goods and Service Tax Rules, 2017</i>
37. Reversal of input tax credit in the case of non-payment of consideration.- (1) A registered person, who has availed of input tax credit on	37. Reversal of input tax credit in the case of non-payment of consideration.- (1) A registered person, who has availed of



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<i>Rule 37 of the Central, Goods and Service Tax Rules 2017</i>	<i>Tamil Nadu Goods and Service Tax Rules, 2017</i>
any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16: [Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.] (2) The amount of input tax credit	input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to subsection (2) of section 16.



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<i>Rule 37 of the Central, Goods and Service Tax Rules 2017</i>	<i>Tamil Nadu Goods and Service Tax Rules, 2017</i>
referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished. (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid. (4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.	[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of Section 15 shall be deemed to have been paid for the purposes of the second proviso of sub-section (2) of Section 16.] (2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished. (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid. (4) The time limit specified in sub-section (4) of



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<i>Rule 37 of the Central, Goods and Service Tax Rules 2017</i>	<i>Tamil Nadu Goods and Service Tax Rules, 2017</i>
	section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

53. If the petitioner has not paid the amount as is contemplated under 2nd proviso to Section 16 (2) of the respective GST enactments, the respondent will be justified in demanding credit availed notwithstanding the fact that the cross-examination of the officers of the 2nd respondent was denied.

54. Therefore, notwithstanding the non-availability of the documents such as invoices and the manual registers, the petitioner would be entitled to input tax credit as also transitional credit if they were validly availed provided the details were captured and available in the system both at the end of the petitioner and the supplier and in the information furnished by the petitioner in various GSTR Forms with the department as detailed above.



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55. The light of the above discussion while quashing the impugned orders and remitting the case back to the respondent, respondents are directed to permit the petitioner to cross-examine the concerned officer of the Department, if the petitioner so desires. Denial of input tax credit to the petitioner can be after verification of electronic records of the petitioner which the department can source based on the Electronic Returns filked by the petitioner.

56. In the light of the above provision, the impugned orders are quashed and the cases are remitted back to the respondent to pass a fresh order on merits and in accordance with law keeping the observation in mind, within a period of six months from the date of receipt of this order. Information that may be gathered from the electronic achieve of the petitioner for the purpose of denying credit to the petitioner shall be furnished to the petitioner as a corrigendum to the Show Cause Notice.

57. The petitioner was directed to co- operate with the 1st respondent or any other officer who may be designated by the department to redo the exercise.



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It is made clear that, in case the petitioner fails to co-operate with the respondent, appropriate orders may be passed on merits based on the available records.

58. In the result, these writ petitions stand allowed by way of remand with the above observation. Consequently, connected miscellaneous petitions are closed. No costs.

09.02.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
kkd

C.SARAVANAN, J.

kkd

To

1. The State Officer,
Adjudication Wing,
Office of the Joint Commissioner (ST) Intelligence,
Erode Division,
No.161, C.t.Building,