IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No. 16319 of 2024
and
W.M.P.Nos. 17862 & 17864 of 2024

Tvl. Sri Vinayak Electricals,
Represented by its Proprietor Rakesh Kumar
1/1. Thambu Naicken Street
Chennai, Tamil Nadu-600 079. ... Petitioner

Vs.

1. The State Tax Officer
   Sowcarpet Assessment Circle
   3rd Floor, Wall Tax Road
   Room No. 302, Chennai – 600 003.

2. The Commercial Tax Officer,
   Sowcarpet Assessment Circle
   3rd Floor, Wall Tax Road
   Room No. 302, Chennai – 600 003. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the impugned order of the 1st Respondent in GSTIN/33AAIPK6377L1Z9/2018-19 dated 27.02.2024 along with the impugned Order and Summary of order of the 2nd Respondent in Form GST DRC – 07 in Reference No. ZD330224163379D dated 27.02.2024 and quash the same.

For Petitioner : Mr.M.Hariharan

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order in Original No.GSTIN/33AAIPK6377L1Z9/2018-19 dated 27.02.2024 in Reference No. ZD330224163379D, on the premise that the Input Tax Credit has been disallowed only on the ground that the claims have been lodged beyond the period prescribed under Section 16(4) of the GST Acts.

2. The petitioner is engaged in the business of electricity goods. The petitioner is registered under the GST Act. During the relevant period 2018-19, the petitioner has filed its returns and paid appropriate taxes.

3. While so, on comparison of the tax payable supplies reported by the petitioner. It is noticed that there was discrepancy between GSTR-3B and ITC. It was also found that the petitioner had claimed excess ITC inasmuch as credit was availed beyond the period stipulated under Section 16(4) of the GST

Act. The petitioner submitted its reply on 18.02.2024, wherein, it was stated that the denial of ITC on the ground that the alleged contravention under Section 16(4) of the GST Act, requires reconsideration. Pursuant to thereof, notice ASMT-10 was issued followed by DRC–01.

4. It is submitted that an amendment has been brought into the GST Acts and that Section 16(5) has now been inserted vide Section 118 of the Finance (No. 2) Act, 2024. The relevant provision reads as under:

> *"118. In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:—*
>
> > *"(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 person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021."*
> >
> > *(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect*

of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,

whichever is later."

5. It is submitted by the learned counsel for the petitioner that in view of the above amendment, the reasons cited by the adjudicating authority while passing the impugned order of assessment may no longer survive and the respondent would have to re-do the assessment in accordance with the above amendment.

6. The learned counsel for the petitioner would submit that earlier this Court has on numerous occasions, remanded on the basis of the Bill proposing the present amendment. The learned Additional Government Pleader for the respondents would submit that they would re-do the assessment taking into account the Finance (No.2) Act, 2024.

7. In view thereof, the impugned order passed by the respondent dated 27.02.2024 is set aside. The assessing/adjudicating authority/respondents would re-do the assessment by taking into account the amendment referred supra. The petitioner may submit their objection by way of reply, within a period of three (3) weeks from the date of receipt of a copy of this order along with the amendment and other details. If any such reply is filed, the same shall be considered and orders shall be passed, after affording reasonable opportunity of personal hearing to the petitioner. It was further submitted by the learned counsel for the petitioner that recovery proceedings have been initiated and bank accounts has been attached. In view of the fact that the impugned order is set aside the recovery proceedings would no longer survive and the respondent is directed to lift the bank attachment.

8. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.11.2024

Index : Yes / No
Internet : Yes/ No
MSM

To:

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MOHAMMED SHAFFIQ, J.

MSM

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