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W.P.No. 19092 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No. 19092 of 2023

and

W.M.P.Nos. 18341 to 18344 of 2023

Subramaniam Ramalingam

...Petitioner

Versus

1.The Assessment Unit
Income Tax Department
National e-Assessment Centre
Delhi E-Ramp, Jawaharlal Nehru Stadium
Delhi-110 003.

2.The Income Tax Officer
Non Corporate Circle 2, Coimbatore
Income Tax Department
No.63, Race Course Road
Coimbatore-641 018.

3.The Principal Commissioner of Income Tax
Coimbatore
Income Tax Department
No.63, Race Course Road
Coimbatore-641 018.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order under Section 147 read with Section 144B of the Income Tax Act, 1961 dated 27.05.2023 in DIN: ITBA/AST/S/147/2023-24/1053239900(1) for the Assessment Year 2015-16.

For Petitioner : Mr.A.S.Sriraman
For Respondents : Dr.B. Ramaswamy
Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the impugned order in dated 27.02.2024, 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.



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2. 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



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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.”



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3. 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.

4. 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 Senior Standing Counsel for the respondent would submit that they would re-do the assessment taking into account the Finance (No.2) Act, 2024.

5. In view thereof, the impugned order passed by the respondent dated 27.02.2024 is set aside. The assessing/adjudicating authority/respondent would re-do the assessment by taking into account the amendment referred supra. The petitioner may submit their objection



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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.

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

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Speaking Order : Yes/No

Neutral Citation : Yes/No

MSM



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MOHAMMED SHAFFIQ, J

MSM

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