IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.11.2024**

CORAM

THE HONOURABLE Mr.JUSTICE C.SARAVANAN

WP.No.13205 of 2022
and
WMP.Nos.12556 & 12557 of 2022

M/s.SJB Automobiles Private Limited
Rep. by its Director Mr.Siva Balakrishnan,
752, Avinashi Road,
Coimbatore – 641 018.

... Petitioner

Vs.

The Assistant Commissioner of GST & Central Excise,
Coimbatore III-B Division,
1441, Elgi Building,
Trichy Road, Coimbatore-641 018.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the impugned Order-in-Original No.02/2021 (AC) with C.No.V/16/ 05/2021 - GST Adjn. Dated 06.07.2021 issued by the respondent and quash the same.

For Petitioner	:	Mr.P.Arumugam for Mr.R.Anish Kumar
For Respondent	:	Mr.A.P.Srinivas Senior Standing Counsel

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ORDER

In this writ petition, the petitioner has challenged the impugned order dated 06.07.2021 passed by the respondent for the period between December 2018 to March 2019. The operative portion of the impugned order reads as under:-

> *"05.13. In view of the above, I hold that M/s.SJB Automobiles P Ltd have contravened the provisions of Sec.16(4) of CGST Act, 2017 in as much as they have failed to avail ITC of Rs.1,21,47,276/- well within time limit as prescribed under sec.16(4) of the Act instead availed the ITC beyond the date of 20-10-2019 (due date for GSTR-3B for Sep-2019). I also hold that they are liable to pay Rs.1,21,47,276/- by way of cash as they would not have got enough balance in electronic credit ledger at the time of filing of subject GSTR-3B returns, if the in-eligible ITC was not availed or reversed. The in-eligible credit of Rs.1,21,47,276/- is liable for recoverable under provisions of Section 73(1) of CGST Act, 2017 read with Sec.20 of IGST Act, 2017and Rule 142(1)(a) of CGST Rules, 2017."*

2. The issue arising out of belated availing of input tax under Section

16 of CGST Act, 2017 has been addressed by the Parliament by inserting Section 16 (5) of the Act. In fact, this Court has taken note of the same and passed an order on 29.07.2024 in ***M/s.Sagar Brush Industries and others Vs. The State Tax Officer's Case [WP (MD).Nos.20773 of 2024 etc., batch]*** The operative portion of the order reads as under:-

> *"4. Already today, few orders have been passed, wherein under similar circumstances, the respective Assessment Orders as also the order passed by the Appellate Authority under Section 107 of the respective GST Enactments have been set aside and the cases were remitted back in the light of Clauses 114 and 146 of the proposals in the Finance (No.2) Bill, 2024, presented on 23.07.2024. Wherever there is a delay in availing*
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> *input tax credit for the Assessment Years 2017-2018 upto 2020-2021, the Parliament has extended an olive branch to taxpayers in terms of the proposals contained in Clause 114 of the Finance (No.2) Bill, 2024. This Clause seeks to amend Section 16(4) of the CGST Act by adding sub-sections 5 and 6. Clause 114 seeking to amend Section 16 of the CGST Act, 2017, reads as under:-*
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> > *"114. 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 upto 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 upto 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."

3. Now 16(5) is a reality and has also notified by the Central Government under Notification No.22/2024-CENTRAL TAX dated 08.10.2024.

4. In view of the above, the impugned order is set aside and the matter is remitted back to the respondent to pass a fresh order on merits and in accordance with the statutory amendment of Section 16 of CGST Act, this writ petition stands allowed. No costs. Consequently, connected WMPs are also closed.

08.11.2024

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Index: Yes/No
Speaking Order/Non Speaking Order

NCC: Yes/No.

C.SARAVANAN, J.

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To
The Assistant Commissioner of GST & Central Excise,
Coimbatore III-B Division,
1441, Elgi Building,
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