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W.P.Nos.30530 of 2024, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.30530, 30683, 31082, and 31094 of 2024

and

**W.M.P.Nos. 33145, 33146, 33300,3301, 33726 & 33728, 33741,
33742 of 2024**

W.P.No.30530 of 2024:

Shree Munthi Vinayaga Industries,
rep. by its Proprietor,
Sri M.Muthu Kumar

.. Petitioner

Vs.

The State Tax Officer-I,
P.N.Palayam Circle,
Coimbatore-18.

...Respondent

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 on the file of the respondent herein in GST/33AROPM6553H1ZH/2018-19 in GST DRC-07 proceedings dated 24.04.2024 and quash the same.

For Petitioner:

Mr.R.Vasumithran

For Respondents :

Mr.K.Vasanthamala, GA (T)



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W.P.No.30683 of 2024:

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Tvl C.K.Spining Mills,
rep. by its Partner SC Karuppannan

.. Petitioner

Vs.

Deputy State Tax Officer-I,
Tiruchengodu Rural,
17, Ponnusamy Building, Sangagiri Road,
Thiruchengode-637 211

...Respondent

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 relating to the impugned order bearing GSTIN 33AAEFC7960P1ZZ/2018-19 dated 15.04.2024 and quash the same.

For Petitioner : Mr.R.Gunalan

For Respondents : Ms.Amirta Poonkodi Dinakaran, GA (T)

W.P.No.31082 of 2024:

M/s.Shri Senthur Murugan Agencies,
rep. by its Partner Jaishankar Palanisamy

.. Petitioner

Vs.

The Deputy State Tax Officer-I,
Tiruchengodu (Twon),
Thiruchengode.

...Respondent



W.P.Nos.30530 of 2024, etc.

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent's Order in GSTIN:33ADBFS3282LIZX/2019-20, dated 27.08.2024, quash the same as illegal and consequently, direct the respondent to provide an opportunity of personal hearing before passing assessment order and pass orders.

For Petitioner : Mr.S.Sivanandam

For Respondents : Mr.G.Nanmaran, Spl.G.P.

W.P.No.31094 of 2024:

M/s.Shri Senthur Murugan Agencies,
rep. by its Partner, Jaishankar Palanisamy

versus

The State Tax Officer-I,
Tiruchengodu (Town),
Thiruchengode.

...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent herein in GSTIN:



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33ADBFS3282LIZX/2018-19, dated 26.04.2024, quash the same as illegal and consequently, direct the respondent to pass afresh order in the light of the recent amendment to the provisions of CGST Act, 2017 after providing an opportunity of personal hearing by issuing fresh show cause notice to the petitioner to adhere the principle of natural justice and pass orders.

For Petitioner : Mr.S.Sivanandam

For Respondents : Mr.G.Nanmaran, Spl.G.P.

COMMON ORDER

These Writ petitions have been filed by the petitioners/taxpayers, who are registered dealers on the files of the respondent-Department under the provisions of the Goods and Service Tax Act, 2017 (GST Act)/ Central Goods and Services Tax Act (CGST Act) as the case may be, challenging the orders passed by the respondent-Department, whereby, their claim of ITC was reversed/negatived and consequently, the petitioners have been directed to pay tax/penalty/interest.

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.



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

“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



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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.

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



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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) 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."



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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-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 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.



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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



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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 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 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



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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.

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

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Index : yes/no

Neutral Citation : yes

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Krishnan Ramasamy, J.

sd/suk

To

The State Tax Officer-I,
P.N.Palayam Circle,
Coimbatore-18.

Deputy State Tax Officer-I,
Tiruchengodu Rural,
17, Ponnusamy Building, Sangagiri Road,
Thiruchengode-637 211

The Deputy State Tax Officer-I,
Tiruchengodu (Twon),
Thiruchengode.

The State Tax Officer-I,
Tiruchengodu (Town),
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