



WEB COPY



W.P.No.31626 of 2024

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.31626 of 2024
and
W.M.P.Nos.34380 and 34379 of 2024

TVI.Shri Balaji Agro Tech
Represented by its propreitor
Mr.AllaliappaRajappa,
No.57, Old Court Road,
Denkanikottai,
Krishnagiri 635 107.

... Petitioner

Vs.

1. The Assistant Commissioner of CGST
and Central Excise,
Hosur I Division, Thally Road,
Hosur 635 109.

2. The Branch Manager,
Indian Bank,
1st Cross Panchayat Office Road,
Denkanikottai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in Order passed by the 1st respondent vide Impugned Order in Original No.10/2023-GST(AC) dated 20.11.2023 in DIN No.20231159XP00004404C8 and the consequential Bank attchment / recovery notice in Form GST DRC-13



W.P.No.31626 of 2024

in DIN No.20240659XP000000B94E dated 09.06.2024 issued by the 1st respondent to the 2nd respondent.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order in OriginalNo.10/2023-GST(AC) dated 20.11.2023 in DIN No.20231159XP00004404C8, 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. 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-



WEB COPY



W.P.No.31626 of 2024

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.”



W.P.No.31626 of 2024

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 20.11.2023 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 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



W.P.No.31626 of 2024

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.

05.11.2024

Index : Yes / No
Internet : Yes/ No
spp

To:

1. The Assistant Commissioner of CGST
and Central Excise,
Hosur I Division, Thally Road,
Hosur 635 109.
2. The Branch Manager,
Indian Bank,
1st Cross Panchayat Office Road,
Denkanikottai.



WEB COPY



W.P.No.31626 of 2024

MOHAMMED SHAFFIQ, J.

spp

W.P.No.31626 of 2024
and
W.M.P.Nos.34380 and 34379 of 2024

05.11.2024