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**IN THE HIGHCOURT OF JUDICATURE AT MADRAS**

**DATED : 20.11.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.33761 of 2024**
**and**
**W.M.P.No.36564 and 36565 of 2024**

Tvl.Sri Vinayaka Enterprises,
Rep. byt its Proprietor G.Vignesh,
3/118, Venkatesha Layout,
S.V.Puram, S.V.Mills Post,
Udumalpet 642 126.

... Petitioner

Vs.

The Deputy State Tax Officer - I,
Udumalpet (South) Assessment Circle,
Udumalpet 642 126.

... Respondent

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in GSTIN: 33AMWPV8646F1Z8/2018-2019 dated 26.04.2024 and quash the same.

| | | |
|---|---|---|
| For Petitioner | : | Mr.S.Ramanathan |
| For Respondent | : | Ms.Amrita Dinakaran<br>Government Advocate |

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## ORDER

The present writ petition is filed challenging the impugned proceedings in GSTIN: 33AMWPV8646F1Z8/2018-2019 dated 26.04.2024.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a service provider and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the monthly returns the following discrepancies were found:

(i) ITC to be reversed on non-business transactions and exempt supplies.

(ii) Claim of Input Tax Credit beyond the period stipulated under Section 16(4) of the GST Act, 2017.

3. It is also submitted by the learned counsel for the petitioner that an intimation in Form DRC01 was issued on 26.12.2023 followed by reminders viz.,24.02.2024, 15.03.2024 and 22.04.2024 and personal hearing viz., 11.03.2024, 22.03.2024 and 26.04.2024. However, the petitioner had not responded to any of the above notices / intimation and the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that

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neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies.

4. In respect of the discrepancy pointed out in the impugned order viz., Reversal of Input Tax Credit claimed on non-business transactions and exempt supplies, the learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax demanded with respect to the discrepancy relating to

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Reversal of Input Tax Credit claimed on non-business transactions and exempt supplies and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. Further, in respect of the other discrepancy pointed out in the impugned order viz., Input Tax Credit claimed beyond the period stipulated under Section 16(4) of the GST Act, it is submitted by the learned counsel for the petitioner 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*

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*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."*

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7. It is thus submitted by the learned counsel for the petitioner that in view of the above amendment, the reason cited by the adjudicating authority with respect to the discrepancy pointed out in the impugned order viz., Input Tax Credit claimed beyond the period stipulated under Section 16(4) of the GST Act, may no longer survive and the respondent would have to re-do the assessment in accordance with the above amendment. The learned Government Advocate appearing for the respondent did not have any serious objections to the same.

8. In view thereof, the impugned order dated 26.04.2024 is set aside and the petitioner shall deposit 25% of the disputed tax in respect of issues other than denial of ITC invoking Section 16(4) of GST Act, within a period of four weeks from the date of receipt of a copy of this order. The impugned order of assessment would then be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not

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filed within the stipulated period, i.e., four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

9. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**20.11.2024**

NCC : Yes / No
Index : Yes / No
Internet : Yes
spp

To:

The Deputy State Tax Officer - I,
Udumalpet (South) Assessment Circle,
Udumalpet 642 126.

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**MOHAMMED SHAFFIQ, J.**

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