BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2024

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THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.10567, 10623 and 10725 of 2024

W.P.(MD)No.10567 of 2024:

Tvl.KR Traders,
Represented by its Partner,
S.Kolappan ...Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Commercial Taxes Office,
Thuckalay-1 Assessment Circle,
Commercial Taxes Office,
Kaatathurai,
Kanniyakumari District – 629 158.

3.The Appellate Deputy Commissioner (GST),
Commercial Taxes Office,
South High Ground Road,
Palayamkottai,
Tirunelveli District – 627 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the second respondent to credit a sum of Rs.1,87,902/- (SGST – 93,951 + CGST – 93,951) and Rs.3,31,123/- (SGST – 1,65,562 + CGST – 1,65,561) towards the Assessment years 2018-19 and 2019-20 respectively from the unutilized Input Tax Credit debited towards the subject Assessment year 2020-21.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

W.P.(MD)No.10623 of 2024:

Tvl.KR Traders,
Represented by its Partner,
S.Kolappan ...Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Commercial Taxes Office,
Thuckalay-1 Assessment Circle,
Commercial Taxes Office,
Kaatathurai,

Kanniyakumari District – 629 158.

3.The Appellate Deputy Commissioner (GST),
Commercial Taxes Office,
South High Ground Road,
Palayamkottai,
Tirunelveli District – 627 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the second respondent to credit a sum of Rs.3,31,123/- (SGST – 1,65,562 + CGST – 1,65,561) towards the Assessment year 2019-20 being the 10% of the tax in dispute pertaining to the Assessment Order in GSTN No. 33AAMFK5358B1ZG/ 2019-20 dated 05.01.2024 from the unutilized Input Tax Credit debited towards the subject Assessment year 2020-21.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

W.P.(MD)No.10725 of 2024:

Tvl.KR Traders,
Represented by its Partner,
S.Kolappan ...Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,

Chennai – 600 005.

2.The State Tax Officer,
Commercial Taxes Office,
Thuckalay-1 Assessment Circle,
Commercial Taxes Office,
Kaatathurai,
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3.The Appellate Deputy Commissioner (GST),
Commercial Taxes Office,
South High Ground Road,
Palayamkottai,
Tirunelveli District – 627 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the second respondent to credit a sum of Rs.1,87,902/- (SGST – 93,951 + CGST – 93,951) towards the subject Assessment year 2018-19 being the 10% of the tax in dispute pertaining to the Assessment Order in GSTN No. 33AAMFK5358B1ZG / 2018-19 dated 05.01.2024 from the unutilized Input Tax Credit debited towards the subject Assessment year 2020-21.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON O R D E R

Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents.

2. These Writ Petitions are filed praying for a Mandamus, directing the second respondent to credit the respective amounts towards the Assessment years 2018-19 and 2019-20 from the unutilized Input Tax Credit debited towards the subject Assessment year 2020-21.

3. The case of the petitioner is that the petitioner had unutilized input tax credit to the tune of Rs.16,66,315/- before the orders of assessment were passed. However, pursuant to the orders of assessment even without waiting for the period of 90 days, the second respondent herein adjusted the said amount available to the credit of the petitioner towards the dues assessed for the period 2020-21. He would submit that during the time of preferring the appeal, he could have utilized the said amount lying in his credit for the payment of 10% on pre-deposit in filing the appeal for all the three assessment years. Since the said

amount was not available, he was not able to adjust the said amount, therefore he has filed the present Writ Petition for a direction to adjust the pre-deposit from Input Tax Credit that is available to the petitioner.

4. The learned Government Advocate appearing for the respondents would submit that since the amount had already been debited to the claim in respect of assessment year 2020-2021, no pre-adjustment could be made over the said credit, since as on date, the amount in his credit stands nil.

5. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. Admittedly, the amount that was lying in the credit of the petitioner has been adjusted to the claim for the assessment year 2020-2021 even before the period of 90 days, which was available to the petitioner to file an appeal. If the said amount was available, the petitioner could have adjusted the same as provided under law. In such circumstances, I direct the third respondent to entertain the appeal with

regard to the assessment years 2018-2019 and 2019-2020 without insisting on the pre-deposit as envisaged. This order is made considering the peculiar circumstances of the case and this order shall not be treated as a precedent in any other case. Since already the amount had been debited, there is no question of pre-deposit for the assessment year 2020-2021 for filing an appeal. The petitioner shall file an appeal within a period of two (2) weeks from the date of receipt of a copy of this order. Since the Writ Petitions had been filed before this Court in the month of April 2024 well within the time available to the petitioner while seeking to condone the delay, the period of pendency of the Writ Petitions can be excluded while reckoning the period of limitation.

7. With the above direction, the Writ Petitions are disposed of. No costs.

07.11.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

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3.The Appellate Deputy Commissioner (GST),
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South High Ground Road,
Palayamkottai,
Tirunelveli District – 627 002.

K.KUMARESH BABU, J.

Nsr

W.P.(MD)Nos.10567, 10623 and 10725 of 2024

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