BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17504 of 2022
and
W.M.P.(MD) Nos.12726 & 12727 of 2022

Tvl.Tenkasi Timbers,
Rep. by Partner
Mydeenpitchai Syed Ali Badusha,
No.143/17-B, Tenkasi Timbers Sa Mills,
Senkottai Road, Tenkasi,
Tenkasi District. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tenkasi Assessment Circle,
Commercial Taxes Office,
Tenkasi, Tenkasi District. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned proceedings of the respondent in GSTIN: 33AAGFT0152N1Z6/2018-19 dated 13.04.2022 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja.Karthikeyan

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

O R D E R

In this Writ Petition, the petitioner has challenged the impugned order dated 13.04.2022 passed by the respondent for Assessment Year 2018-2019 under Section 73(9) of the TNGST Act, 2017.

2. By the impugned order, the demand proposed in Show Cause Notice dated 05.04.2021 has been confirmed. The dispute pertains to the delayed availing of Input Tax Credit for the Assessment Year 2018-2019.

3. The learned counsel for the petitioner would submit that the Parliament has decided to address the issue arising out of the delayed availing of Input Tax Credit, in Clause 114 of the Finance (No.2) Bill, 2024.

4. The learned Additional Government Pleader for the respondent, on the other hand, would submit that the petitioner had already paid the tax and therefore, the benefit of Clause 114 of the Finance (No.2) Bill, 2024 will not be available to the petitioner in term of Clause 146 of the same Bill, even if it is enacted.

5. Both Clause 114 & Clause 146 of the Finance (No.2) Bill, 2024 read as under:-

Clause 114	Clause 146

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	**146.** No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 114 been in force at all material times.

6. Since there is a proposal to the benefit of the assessees like the petitioner in view of the Clause 114 of the Finance (No.2) Bill, 2024, I am inclined to set aside the impugned order and remit the case back to the respondent to pass a fresh order after the Finance Bill is passed as Finance Act, 2024. Needless to state, while passing the order, the respondent shall also consider the amendments as they will be incorporated into the Act after the Finance Bill is passed.

7. In the result, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.07.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:

The Assistant Commissioner (ST),
Tenkasi Assessment Circle,
Commercial Taxes Office,
Tenkasi, Tenkasi District.

C.SARAVANAN, J.

JEN

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