BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16650 of 2022
and
W.M.P.(MD) No.12075 of 2022

Tvl.Karpaga Vinayagar Arts Crafts,
Rep. by Proprietor S.Sankaravel,
No.4/1027, Hussian Colony,
Sivakasi - 626 123. ... 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 Deputy State Tax Officer-2,
O/o. Assistant Commissioner (ST-3),
Sivakasi Assessment Circle-3,
Commercial Taxes Office,
Sivakasi, Virudhunagar District. ... Respondents

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 second respondent in GSTIN: 33BIPPS6541E1Z1/2018-19 dated 08.04.2021 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja.Karthikeyan

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

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ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 08.04.2021 passed by the second respondent under Section 73(9) of the TNGST Act, 2017.

2. The dispute pertains to the Assessment Year 2018-2019. By the impugned order, the petitioner has been called upon to pay a sum of Rs. 90,279/- each towards TNGST and CGST. The dispute has arisen on account of the delay in availing Input Tax Credit beyond the statutory period prescribed under Section 16(4) of the TNGST Act, 2017.

3. It appears that the petitioner did not file the return of income on time but filed it only on 17.12.2019 and paid the tax prior to the passing of the impugned order.

4. The learned counsel for the petitioner would submit that in terms of Clause 114 of the Finance (No.2) Bill, 2024, there is a proposal to give reprieve to the persons like the petitioner.

5. On the other hand, the learned Additional Government Pleader for the respondents would refer to Clause 146 of the Finance (No.2) Bill, 2024.

6. Clause 114 and 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	**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.

7. Incase the Bill is passed as proposed in the Finance (No.2) Bill, 2024, the petitioner may not get any benefit, as the petitioner claims to have paid the amount prior to the passing of the impugned order. Be that as it may, the impugned order is set aside and the case is remitted back to the second respondent to pass a fresh order after the Finance (No.2) Bill, 2024 is passed. All the issues are left open to be decided afresh.

8. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

29.07.2024

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

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Copy To:

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C.SARAVANAN, J.

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