BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.17467 of 2024
and
W.M.P.(MD) Nos.15005 and 15006 of 2024

M/s.Preethi Engineering Enterprises Unit II,
represented by its Managing Partner,
Ramalingam Mayilan ... Petitioner

/vs./

1.Union of India,
represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi 110 001.

2.Central Board of Indirect Taxes and Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.

3.The Assistant Commissioner GST & C.Ex.,
Trichy I Division,
No.1, Williams Road,
Cantonment,
Tiruchirappalli 620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, call for the records pertaining to the impugned order-in-original No.28/2023-GST dated 04.12.2023 issued by the 3rd Respondent and quash the same.

For Petitioner : Mr.Derrick Sam

For R2 & R3 : Mr.R.Nanda Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned Order in Original No.28/2023-GST passed by the third respondent.

2.The dispute has arisen on account of belated availing of input tax credit by the petitioner for the month of March, 2018. The petitioner filed returns on 15.05.2019. The last date for filing the returns expired on 23.04.2019. The Department has thus issued a show cause notice in DRC 01 on 27.09.2023. The petitioner has also replied to the same. However, the demand proposed has been confirmed in view of the statutory restrictions.

3.It is noticed that in the recent Budget that was presented before the Parliament along with the presentation of the Finance Bill, 2024, Clause 114 of the Finance Bill, deals with insertion of sub Sections 5 and 6 to the CGST, 2017. Mirror in the same, a similar amendment is expected to the provisions of the TNGST Act, 2017, if the proposals in the respective Bills ie., Finance Bill No. 55/24 and the proposed Bills to amend the provisions of TNGST Act, 2017, are accepted by the Parliament and the State Legislative Assembly, the delay in filing the returns and the delay in claiming input tax credit would be contained for the assessment year 2017-18 to 2020-21.

4.Clause 114 of the Finance (No.2) Bill, 2024, reads as under:-

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 cancellation of registration,

whichever is later,".

5.The legislative process will take few days to few months and therefore, I am of the view that the impugned order can be set aside and the case can also be remitted back to the respondent to pass a fresh order in the light of the above development. The respondent shall pass final order after the respective Finance Bill's are passed by the Parliament and the State Legislative Assembly. In case, the amendment proposed in Clause 114 is not passed, the respondent may confirm the demand, in which case the petitioner may workout the remedy in accordance with law.

6.With the above directions, the Writ Petition stands disposed of. No costs.

26.07.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

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