BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.19989 of 2024
and
W.M.P.(MD)Nos.16962 & 16963 of 2024

Tvl.Sri Gomathi Wires,
Represented by its Partner:
S.Vinoth. ... Petitioner

Vs.

The Deputy State Tax Officer-II (ST),
Munichalai Road Assessment Circle,
Madurai-20. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records on the file of the respondent in GSTIN: 33ABBFS1321A1Z4/2018-19, dated 30.04.2024 and the consequent FORM GST DRC-07 issued in Reference No:ZD330424243555I Date:30.04.2024 and quash the same as illegal, invalid and against the provisions of the Goods and Services Tax Acts, 2017 and pass such other order or orders as this Court.

For Petitioner : Mr.A.Chandrasekaran

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

ORDER

The present Writ Petition is filed challenging the assessment order dated 30.04.2024 for the period 2018-2019, on the premise that the Input Tax Credit has been disallowed only on the ground that the claims have been lodged beyond the period prescribed under Section 16(4) of the GST Acts.

2. It is submitted that an amendment has been brought into the GST Acts and that Section 16(5) has now been inserted vide Section 118 of the The Finance (No. 2) ACT, 2024 and the relevant provisions 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 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."

3. It is submitted by the learned Counsel for the petitioner that in view of the above amendment, the reasons cited by the adjudicating authority while passing the impugned order of assessment may no longer survive and the respondent would have to re-do the assessment in accordance with the above amendment.

4. The learned Counsel for the petitioner would submit that earlier this Court has on numerous occasions, remanded on the basis of the Bill proposing the present amendment. The learned Additional Government Pleader for the respondent would submit that they would re-do the assessment taking into account the Finance (No. 2) ACT, 2024.

5. In view thereof, the impugned order, dated 30.04.2024 is set aside. The learned assessing adjudicating authority/respondent would re-do the assessment by taking into account the amendment referred supra. Apart from the issue relating to Section 16(4) of the GST Acts, there are three other issues viz., a) in-eligibility to avail Input Tax Credit in terms of Section 17(5) of the GST Act b) Ineligible ITC declaration and c) excess ITC claimed inasmuch as, outward supplies not supported by E-way bills and discrepancies existing between GSTR-9 and GSTR-01.

6. Now all these put together results in tax liability of Rs.1,65,731/-. It is submitted that in respect of the above issues, the petitioner had filed their objections, which has not been considered. Since this Court is inclined to set aside the order insofar as it relates to invoking Section 16(4), assessing authority is also directed to reconsider the submissions of the petitioner with regard to the three other issues. The petitioner is at liberty to file their objections in respect of all the issues including Section 16(4) within a period of four weeks from the date of receipt of a copy of this order. If such reply is filed, the same shall be considered and orders shall be passed, after affording reasonable opportunity of personal hearing to the petitioner. If such reply is not filed within the prescribed period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order shall stand revived.

7. With the above direction, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

21.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Deputy State Tax Officer-II (ST),
Munichalai Road Assessment Circle,
Madurai-20.

MOHAMMED SHAFFIQ, J.

BTR

W.P.(MD)No.19989 of 2024

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