BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)Nos.21737, 22295, 22296 & 22297 of 2024
and
W.M.P(MD)Nos.18361, 18264, 18866, 18869, 18864, 18865, 18868 & 18867 of 2024

Tvl.Aanjaneya Pharmacy,
Represented by its Proprietor,
K.Manikandan. ... Petitioner
(In All Cases)

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer (Inspection Cell),
Commercial Taxes Office,
Madurai Road,
Virudhunagar-626 001. ... Respondents
(In All Cases)

Prayer in W.P(MD)No. 21737 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned order of the second respondent in

GSTIN:33BLSMP7444Q1Z5/2019-2020, dated 29.01.2022 and quash the same and pass such further or other orders as this Court.

Prayer in W.P(MD)No.22295 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned order of the second respondent in GSTIN:33BLSMP7444Q1Z5/2017-2018, dated 29.01.2022 and quash the same and pass such further or other orders as this Court.

Prayer in W.P(MD)No.22296 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned order of the second respondent in GSTIN:33BLSMP7444Q1Z5/2018-2019, dated 29.01.2022 and quash the same and pass such further or other orders as this Court.

Prayer in W.P(MD)No.22297 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned order of the second respondent in GSTIN:33BLSMP7444Q1Z5/2020-2021, dated 29.01.2022 and quash the same and pass such further or other orders as this Court.

In All Cases:

For Petitioner : Mr.B.Rooban

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

COMMON ORDER

These writ petitions are filed challenging the impugned orders passed by the second respondent, dated 29.01.2022 for the assessment years 2017-2018, 2018-2019, 2019-2020 and 2020-2021 on the premise that the petitioner has been denied the Input Tax Credit (ITC) by applying Section 16(4) of the Central Goods and Services Tax Act, 2017 [hereinafter referred as "CGST Act"] and the Tamil Nadu Goods and Services Tax Act, 2017 [hereinafter referred as "TNGST Act"]. However, with the amendment to the GST Act, whereby Section 16(5) of the CGST Act has been introduced, resultantly, the time line provided under Section 16(4) of the CGST Act would no longer govern the petitioner's right to claim Input Tax Credit.

2. The petitioner is engaged in the business of wholesale, drugs and medicine under the name and style of 'Aanjaneya Pharmacy'. The petitioner is registered under the CGST Act. The petitioner had filed their return during the relevant assessment years. For the assessment years 2017-2018, 2018-2019, 2019-2020 and 2020-2021, the following issues arise out of the order of assessment, viz., a) Claim of Input Tax Credit beyond the statutory period of limitation under Section 16(4) of the CGST Act b) Mis-match between GSTR-3B and GSTR-2A c) Best judgment assessment being made to arrive at the value of the output supply by adding 10% towards gross profit to the value of the inward supply.

3. It is submitted by the learned Counsel for the petitioner that an amendment has been brought into the TNGST Act and that Section 16(5) of the CGST Act has now been inserted vide Section 118 of The Finance (No. 2) Act, 2024 and the relevant provision 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."

4. The learned counsel for the petitioner would submit that in view of the above amendment, the reasons cited by the adjudicating authority in 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. He would also submit that earlier, this Court has on numerous occasions, remanded the matter on the basis of the Bill proposing the present amendment.

5. The learned Additional Government Pleader for the respondents would submit that the respondents would re-do the assessment taking into account Finance (No. 2) Act, 2024.

6. It is further submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies between GSTR-3B and GSTR-2A and the infirmity in making the best judgment assessment.

7. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024*** and would submit that the petitioner is ready and willing to pay 25% of the disputed tax in respect of issues other than denial of credit invoking Section 16(4) of the Act and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

8. In view thereof, the impugned orders passed by the respondent dated 29.01.2022 are set aside. The learned assessing adjudicating authority/respondent shall re-do the assessment by taking into account the amendment referred *supra*. The petitioner shall deposit 25% of the disputed tax in respect of issues other than denial of credit invoking Section 16(4) of the Act within a period of two (2) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned orders of assessment shall be treated as show cause notice and the petitioner shall submit its objections along with supporting documents/material within a period of four (4) weeks from the date of receipt of a copy of this order. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or the objections are not filed within the stipulated period, i.e., two weeks and four weeks from the date of receipt of a copy of this order respectively, the impugned order of assessment shall stand revived.

9. These writ petitions stand disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

19.09.2024

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

To

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Office of the Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The State Tax Officer (Inspection Cell),
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MOHAMMED SHAFFIQ, J.

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