



W.P.(MD) No.20773 of 2023 etc. batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.20773, 23263, 20183, 20184, 22295, 23238, 23239, 24022, 24178, 23409, 23410, 23441, 28053, 29157 & 29432 of 2023 and 2694, 3608, 3644, 5928, 6298, 6401, 6407, 6746, 6952, 7313, 7779, 9011, 12225, 12226, 12969, 12980, 12981, 13548, 13728, 13729, 13797, 14319, 14379, 15227, 16121, 16695, 16745 & 16893 of 2024

and

W.M.P.(MD)Nos.17190, 19466, 16649, 16652, 18574, 19413, 19414, 19415, 19428, 19429, 19430, 20173, 20174, 20336, 20339, 20340, 19627, 19623, 19651, 24139, 24142, 25200, 25201, 25392 & 25395 of 2023 and 2714, 3555, 3556, 3579, 5579, 5896, 5994, 5996, 6001, 6269, 6476, 6478, 6730, 7103, 8194, 8195, 10847, 10848, 10910, 10911, 11513, 11514, 11520, 11522, 11519, 11521, 11941, 11942, 12078, 12079, 12080, 12081, 12138, 12569, 12606, 13345, 14009, 14010, 14449, 14485, 14486 & 14549 of 2024

W.P.(MD)No.20773 of 2023:-

M/s.Sagar Brush Industries,
Rep. by its Proprietor Prem Sagar,
81/13, Maravankulam, Utchapatty,
Thirumangalam,
Madurai – 625 706.

... Petitioner

Vs.

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Thirupparankundram Assessment Circle,
Commercial Taxes Buildings,
Madurai.

... Respondent



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Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records on the files of the respondent in GSTIN.33AKJPP1272E1ZD/2019-20 dated 30.01.2023 and quash the same as illegal, arbitrary, undue enrichment, without jurisdiction.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.J.K.Jayaselan
Government Advocate

COMMON ORDER

By this common order, all these Writ Petitions are being disposed of.

2. In these Writ Petitions, the Assessment Orders seeking to deny input tax credit availed by the respective petitioners belatedly beyond the statutory period prescribed under Section 16(4) of the respective GST Enactments were challenged.

3. The learned counsel for the petitioner in W.P.(MD)No.16745 of 2024 submits that the petitioner therein is aggrieved by the impugned Order-in-Appeal No.49 / 2022 – GST [ADC – MDU] dated 29.02.2024, wherein the order of the Original Authority namely, the Assistant



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Commissioner of GST and Central Excise, Tuticorin Division, in Order-
in-Original No.02/2022-GST dated 24.03.2022 has been affirmed. It is
submitted that the issue otherwise is common in all these Writ Petitions.

4. Already today, few orders have been passed, wherein under similar circumstances, the respective Assessment Orders as also the order passed by the Appellate Authority under Section 107 of the respective GST Enactments have been set aside and the cases were remitted back in the light of Clauses 114 and 146 of the proposals in the Finance (No.2) Bill, 2024, presented on 23.07.2024. Wherever there is a delay in availing input tax credit for the Assessment Years 2017-2018 upto 2020-2021, the Parliament has extended an olive branch to taxpayers in terms of the proposals contained in Clause 114 of the Finance (No.2) Bill, 2024. This Clause seeks to amend Section 16(4) of the CGST Act by adding sub-sections 5 and 6. Clause 114 seeking to amend Section 16 of the CGST Act, 2017, 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



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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 above concession is with a rider in Clause 146 of the Finance (No.2) Bill, 2024 (Bill No.55 of 2024), wherein it has been stated as follows:-



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"146.No refund of tax paid or input tax credit reversed.

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. It is most likely that similar proposals will also be made to the provisions of the TNGST Act, 2017 as and when the State Budgets are presented, as the amendments to the Central Act will have a corresponding amendments in the respective State Enactments to levy GST. These are pursuant to the recommendation of the GST Council in its 53rd Meeting held on 22.06.2024.

7. Since the Parliament itself has come to the rescue of the assesseees, I am of the view that the impugned orders passed by the Original Authority as also the Appellate Authority upholding the orders of the Assessing Officer in the batch of Writ Petitions are set aside and the cases are remitted back to the Assessing Officer to pass a fresh order on merits strictly in accordance with the Finance Act, 2024. In case, the proposals in Clauses 114 and 146 of the Finance (No.2) Bill, 2024 are accepted and enacted in the Finance Act, 2024, the benefit of these provisions may be extended to the respective petitioners.



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8. Regarding the demands confirmed in the impugned order, excluding the denial of input tax credit for the wrong availing of input tax credit, the respective petitioners shall also deposit 25% of the disputed tax. Subject to this condition, orders will be passed on merits and in accordance with law.

9. These Writ Petitions stand disposed of with the above directions.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

29.07.2024

To

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Thirupparankundram Assessment Circle,
Commercial Taxes Buildings,
Madurai.



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C.SARAVANAN, J.

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Common order in
W.P.(MD)Nos.20773, 23263, 20183, 20184, 22295, 23238, 23239,
24022, 24178, 23409, 23410, 23441, 28053, 29157 & 29432 of 2023 and
2694, 3608, 3644, 5928, 6298, 6401, 6407, 6746, 6952, 7313, 7779, 9011,
12225, 12226, 12969, 12980, 12981, 13548, 13728, 13729, 13797,
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