BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22419 of 2024
and
W.M.P.(MD)Nos.18998 and 19000 of 2024

Nagul & Co
Represented by its Partner,
S.Ramamoorthy ... Petitioner

Vs.

The Deputy State Tax Officer II,
Pattukottai I Assessment Circle,
Pattukottai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the respondent in GSTIN: 33AAHFN7983L1ZM/2018-19 dated 24.04.2024 and quash the same as illegal, arbitrary, against the provisions of law and against the principles of natural justice.

For Petitioner : Mr.A.Chandra Sekaran

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

O R D E R

The present Writ Petition is filed challenging the assessment order dated 24.04.2024 for the period 2018-2019, on the premise that the Input Tax Credit has been disallowed *inter alia* 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. Apart from the denial of credit under Section 16(4) of the Act, there are other issues involved, viz.,

a) Denial of Input Tax Credit on the premise that there is mismatch between GSTR-3B and GSTR-2A.

b) Input Tax Credit to be reversed in respect of non business transactions and exempted supplies.

5. The learned counsel for the petitioner would submit that with regard to liability which arises in respect of other two issues, viz., mismatch between GSTR-3B and GSTR-2A and reversal of Input Tax Credit on exempted supplies and non business transactions, the petitioner is ready and willing to pay 25% of the disputed tax 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 respondent does not have any serious objection.

6. In view thereof, the impugned order dated 24.04.2024 is set aside and the petitioner shall deposit 25% of the disputed tax, in respect of issues other than denial of credit under 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 order of assessment shall be treated as show cause notice and the petitioner shall submit its objections, in respect of all the issues, within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. 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 respectively, from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

<u>To:</u>

The Deputy State Tax Officer II,
Pattukottai I Assessment Circle,
Pattukottai.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.22419 of 2024

20.09.2024