BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.25146 of 2024
and
W.M.P.(MD).Nos.21382 and 21384 of 2024

Sree Engineering,
Represented by its Partner R.Sivaram. ... Petitioner

Vs.

1.The Assistant Commissioner of GST
and Central Excise,
I-Division, GST-Trichy,
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.The Assistant Commissioner (State Taxes),
Pudukkottai III Circle,
Commercial Taxes Building,
Pudukkottai - 622 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent in the Order in Original No.21/2023-GST dated 17.11.2023 bearing DIN : 20231159XN010001010B and the consequential order in Form GST DRC-07 bearing Ref. No. ZD330224161534P dated 26.02.2024 on the file of the 2nd respondent and quash the same as illegal, arbitrary.

For Petitioner	:	Mr.J.Prasanna Kumar
For R-1	:	Mr.R.Nandakumar Senior Standing Counsel
For R-2	:	Mr.R.Sureshkumar Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the assessment order dated 17.11.2023 and Form GST DRC-07 notice dated 26.02.2024 for the period 2017-2018 and 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 Finance (No. 2) Act, 2024. 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."

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 respondents would have to re-do the assessment in accordance with the above amendment. It is further submitted that subsequent to the passing of the impugned order, garnishee proceedings have also been initiated and the same may be withdrawn.

4. The learned counsel for the petitioner would submit that earlier this Court has on numerous occasions, remanded the matter back to the Assessing Authority on the basis of the Bill proposing the present amendment. The learned counsel for the respondents would submit that they would re-do the assessment taking into account the Finance (No.2) Act, 2024 and the garnishee proceedings would be withdrawn.

5. In view thereof, the impugned orders dated 17.11.2023 and 26.02.2024 are set aside. The learned assessing/adjudicating authority/respondents shall re-do the assessment by taking into account the amendment referred supra. In respect of other issues, the impugned orders shall remain undisturbed. The petitioner may submit their objection by way of reply, within a period of three (3) weeks from the date of receipt of a copy of this order along with the amendment and other details. If any such reply is filed, the same shall be considered and orders shall be passed by the respondents, after affording

reasonable opportunity of personal hearing to the petitioner. The respondents shall withdraw the garnishee proceedings, insofar as it relates to the demand in view of denial of ITC in terms of Section 16(4) of the Act for the period 2017-2018 and 2018-2019 covered vide order, dated 17.11.2023. Liberty is granted to the respondents to continue with the garnishee proceedings in respect of any other demand covered by the said garnishee proceedings. If the objections are not filed within the stipulated period, i.e., three weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.10.2024

Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.

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