BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.25436 of 2024
and
W.M.P.(MD).Nos.21583 and 21584 of 2024

Nadiamman Gas Agency,
Represented by its Proprietor,
Kumar. ... Petitioner

Vs.

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

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 of the respondent in GSTIN:33AAGFN5338Q1ZS/2018-19 dated 18.04.2024 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.J.K.Jeyaselan Government Advocate

ORDER

The present Writ Petition is filed challenging the assessment order dated 18.04.2024 for the period 2018-2019.

2. It is submitted by the learned counsel for the petitioner that ITC has been disallowed on the alleged difference between GSTR-2A and GSTR-3B resulting in a tax liability of Rs.82,552/- and that the claims have been lodged beyond the period prescribed under Section 16(4) of the GST Acts.

3. 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."

4. 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.

5. 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 respondent would submit that they would re-do the assessment taking into account the Finance (No.2) Act, 2024.

6. As regards the other issue, viz., alleged mismatch between GSTR-2A and GSTR-3B, the learned counsel for the petitioner would submit that subsequent to the passing of the impugned order, a sum of Rs.3,52,929/- has already been recovered and would thus submit that if the petitioner is provided with an opportunity, he would be able to demonstrate that the above discrepancy do not exist. It was submitted that the taxes in respect of the said issue has already been recovered and submitted that they may be permitted to put forth their objections with regard to the said discrepancy as well, which was not objected to by the learned counsel for the respondent.

7. In view thereof, the impugned order passed by the respondent dated 18.04.2024 stands set aside. The learned assessing/adjudicating authority/respondent shall re-do the assessment by taking into account the amendment referred supra and the objections, if any, that may be submitted in respect of all denial of credit under Section 16(4) of the Act and other issue with regard to which, taxes have been recovered. The petitioner may submit their objection by way of reply, within a period of four (4) 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 respondent, after affording reasonable opportunity of personal hearing to the petitioner. If the objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

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

23.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
The Deputy State Tax Officer – I,
Pattukottai I Assessment Circle,
Thanjavur.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.25436 of 2024

23.10.2024