



W.P.Nos.5978 and 5983 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.11.2024
Pronounced on	09.05.2025

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CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

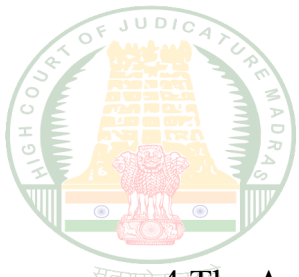
W.P.Nos.5978 and 5983 of 2020W.P.No.5978 of 2020

M/s.L & T Geostructure LLP,
Represented by its Chief Financial Officer
Mr.S.Vaidyanathan

... Petitioner

Vs.

- 1.The Union of India,
Through its Revenue Secretary,
Department of Revenue,
Ministry of Finance,
128-A / North Block,
New Delhi.
- 2.The Government of Tamil Nadu,
Through its Secretary,
Department of Commercial Taxes,
Fort St. George, Chennai – 600 006.
- 3.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.



W.P.Nos.5978 and 5983 of 2020

4. The Assistant Commissioner (ST),
Nandambakkam State Tax Office,
17, 2nd Street, Loganathan Nagar,
Choolaimedu,
Chennai – 600 094.

... Respondents

Prayer in W.P.No.5978 of 2020: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare Sub-Rule (4) of Rule 36 of the Central Goods and Services Tax Rules, 2017 as *ultra vires* the Central Goods and Services Tax Act, 2017 as well as violative of Article 14 of Constitution of India.

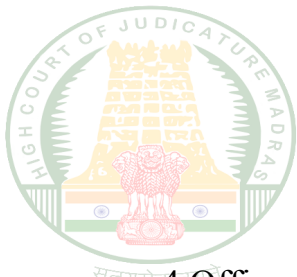
W.P.No.5983 of 2020

M/s.L & T Geostructure LLP,
Represented by its Chief Financial Officer
Mr.S.Vaidyanathan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Through its Secretary,
Department of Commercial Taxes,
Fort St. George, Chennai – 600 006.
2. The Union of India,
Through its Revenue Secretary,
Department of Revenue,
Ministry of Finance,
128-A / North Block, New Delhi.
3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.



W.P.Nos.5978 and 5983 of 2020

4. Office of the Assistant Commissioner (ST),
Nandambakkam State Tax Office,
17, 2nd Street, Loganathan Nagar,
Choolaimedu, Chennai – 600 094.

... Respondents

Prayer in W.P.No.5983 of 2020: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare Sub-Rule (4) of Rule 36 of the Tamil Nadu Goods and Services Tax Rules, 2017 as *ultra vires* the Tamil Nadu Goods and Services Tax Act, 2017 as well as violative of Article 14 of Constitution of India.

W.P.No.5978 of 2020

For Petitioner : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran and
Sridharan Attorneys
For Respondents :
For R1 : Mr.Rajnish Pathiyil
Senior Standing Counsel
For R2 to R4 : Mr.T.N.C.Kaushik
Additional Government Pleader

W.P.No.5983 of 2020

For Petitioner : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran and
Sridharan Attorneys
For Respondents :
For R1, R3 and R4 : Mr.T.N.C.Kaushik
Additional Government Pleader
For R2 : Mr.Rajnish Pathiyil
Senior Standing Counsel



W.P.Nos.5978 and 5983 of 2020

COMMON ORDER

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(Order of the Court was made by **C. SARAVANAN, J.**)

In these Writ Petitions, the Petitioner has challenged the *vires* of Rule 36(4) of both Central Goods and Services Tax (CGST) Rules, 2017 (hereinafter referred to as 'CGST Rules') and Tamil Nadu Goods and Services Tax (TNGST) Rules, 2017 (hereinafter referred to as 'TNGST Rules'). Rule 36(4) of the respective GST Rules read identically.

2. These Writ Petitions are of the year 2020. When these Writ Petitions were filed, Rule 36(4) of the respective GST Rules read differently from how it read after its amendment with effect from **01.01.2022**.

3. Rule 36(4) of the CGST Rules as it stood at the time when these Writ Petitions were filed and at the time of passing of this Order are reproduced below for the sake of clarity:-

Table-I

Rule 36(4) of CGST Rules with effect from 09.10.2019	Rule 36(4) of CGST Rules with effect from 01.01.2022
36. Documentary requirements and conditions for claiming Input Tax Credit:	



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Rule 36(4) of CGST Rules with effect from 09.10.2019	Rule 36(4) of CGST Rules with effect from 01.01.2022
(1) (2) (3) (4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.	(1) (2) (3) (4) No Input Tax Credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.

4. During the period between **01.01.2017** and **08.10.2019**, the impugned Rule in these Writ Petitions, i.e., Rule 36(4) were not there in the respective GST Rules. The above provision was inserted by CGST (6th Amendment) Rules 2019 with effect from **09.10.2019**. Later, the aforesaid Rule was further amended on various occasions. Finally, vide CGST (10th Amendment) Rules,



W.P.Nos.5978 and 5983 of 2020

2021 with effect from **01.01.2022**, Rule 36(4) of the respective GST Rules stands as extracted above in Column 2 in Table I of this Order.

5. As far as TNGST Rules are concerned, Rule 36(4) of the Rules was first inserted by **Notification No. SRO A-39(a)/2019** dated **11.10.2019** with effect from **09.10.2019** vide TNGST (6th Amendment) Rules, 2019. The impugned amendment to Rule 36(4) of the TNGST Rules was later substituted by **Notification No. SRO A-48(a)/2020** dated **23.12.2020** with effect from **01.01.2021** vide TNGST (14th Amendment) Rules, 2020.

6. At the time of inception of Rule 36(4) of the respective GST Rules, with effect from **09.10.2019**, a registered person was entitled to avail restricted Input Tax Credit (ITC) equivalent to the 20% of the eligible credit if the details of invoices or debit notes had not been uploaded by the supplier under Section 37(1) of the respective GST Acts.

7. The restrictions in the sub-clause (4) to Rule 36 of the respective GST Rules that was initially fixed at 20% with effect from **09.10.2019** was reduced over a period to 10% and thereafter to 5% and eventually to 'Nil' Input Tax



Credit (ITC), if the details, required under Section 37(1) of the respective GST Acts were not uploaded by the supplier. Similar amendments were also made to the provisions of the TNGST Rules which are not reproduced as the provisions read *mutatis mutandis*.

8. The details of the percentage of eligible Input Tax Credit (ITC) that could be availed as per Rule 36(4) of the respective GST Rules under Section 37(1) of the GST Acts, if necessary documents were not uploaded as per Rule 36(4) of the respective GST Rules are as under:-

Table-II

Sl. No.	Period/ Date	Nature of Registration	Amendment to CGST vide Notification No.	Amendment to TNGST vide Notification No.
1	01.01.2017 to 08.10.2019	Sub-rule 4 to Rule 36 not in the respective GST Rules	---	---
2	09.10.2019 to 31.12.2019	20%	Notification. No.49/2019-Central Tax (CT) dated 09.10.2019/6 th Amendment Rules, 2019	Notification. No. SRO A-39(a)/2019, dated 11.10.2019/6 th Amendment Rules, 2019
3	01.01.2020 to 31.12.2020	10%	Notfn.No.75/2019-Central Tax (CT) dated 26.12.2019	Notification No.SRO A-46(a-1)/2019 dated 30.12.2019/9 th Amendment Rules, 2019



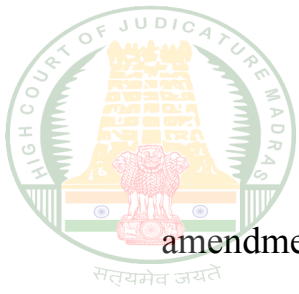
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Sl. No.	Period/ Date	Nature of Registration	Amendment to CGST vide Notification No.	Amendment to TNGST vide Notification No.
4	01.01.2021 to 31.12.2021	5%	Notification No. 94/2020 Central Tax (CT) dated 22.12.2020	Notification No. SRO.A48(a)/2020 dated 23.12.2020/14 th Amendment Rules, 2020
5	01.01.2022 to 31.12.2022	NIL	Notification. No.40/2021- Central Tax (CT) dated 01.01.2022/10 th (Amendment) Rules, 2021	Notification. No. SRO A/24(d)/2021 dated 30.12.2021/10 th (Amendment) Rules, 2021

9. Presently, under the respective GST Rules, no Input Tax Credit (ITC) can be availed if details are not furnished by the supplier of service or goods as is required under Section 37(1) of the CGST Act and unless, the details referred to in Rule 36(4)(a) and (b) of the respective GST Rules are available, namely:-

- the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.

10. Section 37(1) of the respective GST Acts read identically. However, Section 37(1) of the respective GST Acts read differently at the time when these Writ Petitions were filed. Section 37(1) of the respective GST Acts after its



amendment vide Finance Act, 2022 (Act 6 of 2022) in the year 2022 with effect

from **01.10.2022** vide **S.O. 4569(E)** dated **28.09.2022** reads differently. They are not material for the present dispute i.e., to decide whether the restriction placed was justified or not.

11. Section 37(1) of the respective GST Acts as it stood at the time when these Writ Petitions were filed and how they read when this Order is being passed are reproduced below. For the sake of clarity, Section 37(1) of the CGST Act are extracted below:-

Table-III

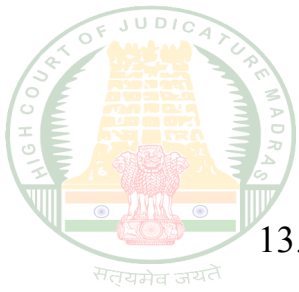
Section 37(1) of the CGST Act with effect from 01.07.2017	Section 37(1) of the CGST Act with effect from 01.10.2022
<i>37. Furnishing details of outward supplies.—</i> <i>(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in</i>	<i>37. Furnishing details of outward supplies.—</i> <i>(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall subject to such</i>



Section 37(1) of the CGST Act with effect from 01.07.2017	Section 37(1) of the CGST Act with effect from 01.10.2022
<i>such manner as may be prescribed:</i> <i>Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:</i> <i>Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:</i> <i>Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</i>	<i>conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies.</i> <i>Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:</i> <i>Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</i>

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:-

12. The principle ground of attack of the Petitioner to Sub-Rule 4 to Rule 36 of the respective GST Rules is that there are no restrictions under Section 16 of both the respective GST Acts and therefore the restrictions in the form of restricted credit equivalent to the eligible credit on the percentage of eligible credit was arbitrary and *ultra vires* to the provisions and the Rules of the respective GST enactments.

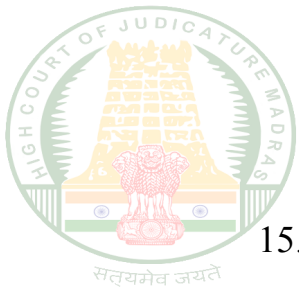


W.P.Nos.5978 and 5983 of 2020

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13. Learned counsel for the Petitioner would submit that sub-rule 4 to Rule 36 of the respective GST Rules are *ultra vires* the respective GST Acts since it prescribes restrictions with regard to availment of Input Tax Credit (ITC). Even though, Section 43 of the CGST Act empowers the Central Government to make Rules restricting availment of Input Tax Credit (ITC) on supplies not declared by the suppliers in **Form GSTR-1**, the same has not been notified by the Central Government.

14. It is submitted by the learned counsel for the Petitioner that Rule 36(4) of the respective GST Rules inserted vide **Notification No.49/2019-Central Tax (CT)** dated **09.10.2019** whereby the sub-rule 4 to Rule 36 of the GST enactments was incorporated. It is submitted that the sub-rule (4) to Rule 36 of the GST enactments could have been brought into the respective Rules only after Section 43A of the respective GST enactments were implemented. It is submitted that although Section 43A of the respective GST enactments were incorporated, it is never been notified. A reference was made to sub-section 4 to Section 43A of the respective GST enactments to substantiate the case.



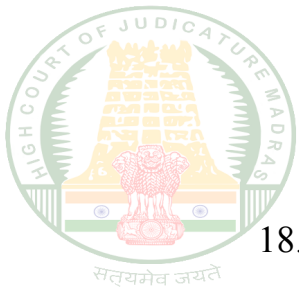
W.P.Nos.5978 and 5983 of 2020

15. It is therefore submitted by the learned counsel for the Petitioner that

although Section 43A of the respective GST enactments were inserted by the Central Goods and Services Tax (Amendment) Act, 2018 and Goods and Services Tax (Compensation to States) Amendment Act, 2018, it has not been notified. Therefore, in the absence of implementation of Section 43A of the respective GST enactments during the period in dispute, there was no scope for imposing restriction in availing the Input Tax Credit (ITC) under Rule 36(4) of the respective GST Rules by a registered person like the Petitioner.

16. That apart, it is submitted by the learned counsel for the Petitioner that once a registered person satisfies the requirements of Section 16(2) of the respective GST enactments, the Input Tax Credit (ITC) availed by such registered person as specified in the provision are to be allowed.

17. Further, it is submitted by the learned counsel for the Petitioner that if the tax charged in respect of supply which was actually being paid to the Government by the supplier either in cash or through utilization of Input Tax Credit (ITC), the credit availed by such a registered person has to be allowed.

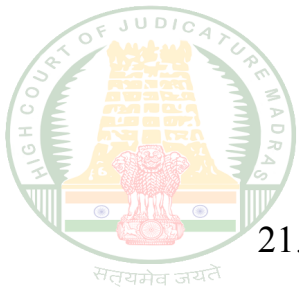


W.P.Nos.5978 and 5983 of 2020

18. It is further submitted by the learned counsel for the Petitioner that merely because there is an omission on the part of the supplier to file the returns correctly under Section 37 of the respective GST enactments read with Rule 36 of the respective GST Rules, the Input Tax Credit (ITC) that is available for the Petitioner under Section 16 of the respective GST enactments cannot be restricted. Therefore, it is submitted that Rule 36(4) of the respective GST Rules are *ultra vires* and therefore these Writ Petitions deserves to be allowed.

19. The learned counsel for the Petitioner would further submit that Rule 36(4) of the respective GST Rules are arbitrary, irrational and violative of Articles 14, 19 and 21 of the Constitution of India. It is further submitted that the amended provision is *ultra vires* Section 16 of the respective GST enactments which is the *plenary* legislation which governs the availment of Input Tax Credit (ITC).

20. It is stated that Section 16(1) of the respective GST enactments allows Input Tax Credit (ITC) to be availed by a registered person subject to such restrictions and limitations as may be prescribed under the respective provision.



W.P.Nos.5978 and 5983 of 2020

21. It is further stated that Section 16(2) of the respective GST Acts is the

WEB COPY *non-obstante* clause that contains certain conditions with regard to availing Input Tax Credit (ITC) unless the registered person is in possession of tax invoices or debit notes issues by a supplier registered under the CGST Act and TNGST Act and / or such other tax, both the documents as may be prescribed and that such registered person has received the goods or services or both.

22. Therefore, the learned counsel for the Petitioner would submit that the conditions or restrictions should be only as prescribed in the statute. The impugned conditions for availing Input Tax Credit (ITC) are specifically covered under Section 43 or Section 43A of the respective GST Acts, therefore it is submitted that the source of power to insert Rule 36(4) of the respective GST Rules cannot be found in Section 16(1) of the respective GST Acts. It is further submitted that such requirements and restrictions on availing Input Tax Credit (ITC) have been sustained due to technical difficulties in implementing the same. Therefore, the said procedures cannot be implemented.

23. The learned counsel for the Petitioner would also submit that in fact Section 43A of the respective GST enactments has been inserted to provide the procedure for furnishing the return and / or availing the Input Tax Credit (ITC)



W.P.Nos.5978 and 5983 of 2020

and a specific provision to that effect is contained in Sub-Section (4) of Section 43A of the respective GST Acts. However, the Section itself has not been implemented and therefore the Rule which could have been traced to this Section cannot be enforced *de hors* the Section being implemented.

24. Therefore, the learned counsel for the Petitioner would contend that Rule 36(4) of the respective GST Rules is beyond the scope, mandate and concern of the provisions of the parent Act. It is also submitted that it is a settled law that every Rule must satisfy the touchstone of a parent statute's provision and failure to do so renders the Rule *ultra vires* the provisions of the parent statute. In this regard, the learned counsel for the Petitioner would rely upon the decision of the Hon'ble Supreme Court in “**General Officer Commander-in-Chief Vs. Subhas Chandra Yadav**”, AIR (1988) SC 876.

25. Learned counsel for the Petitioner would also submit that sub-rule 4 to Rule 36 of the respective GST Rules have been inserted by invoking the powers conferred under Section 164 of the respective GST Acts and the said provision cannot be invoked for introducing Rule 36(4) for two reasons viz., firstly, the introduction of Rule 36(4) to the respective GST Rules were not recommended by the GST Council.

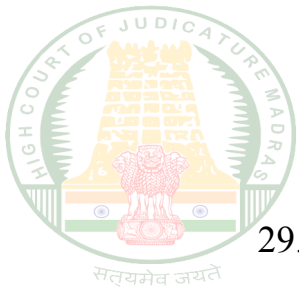


W.P.Nos.5978 and 5983 of 2020

WEB COP 26. Thus, it is submitted that the introduction of Rule 36(4) vide Notification No.49/2019-Central Tax (CT) dated 09.10.2019 is violative of Section 164 of the GST enactments inasmuch as the requirement of recommendation of GST Council, prescribed under Section 164(1) is not satisfied.

27. Secondly, it is submitted by the learned counsel for the Petitioner that Section 164 of the CGST Act empowers the Central Government to make Rules only to carry out the provisions of the CGST Act. The only provision which corresponds to Rule 36(4) of the respective GST Rules is Section 43A of the respective GST enactments which have not been implemented.

28. That being so, the learned counsel for the Petitioner submits that Section 164 of the CGST Act cannot be invoked for introducing Rule 36(4) of the CGST Rules. In this regard, the learned counsel for the Petitioner has also relied upon the decision of the Hon'ble Supreme Court in “**Kunj Behari Lal Butail and others Vs. State of Himachal Pradesh and others**”, (2000) 3 SCC 40 / 2000 SCC OnLine SC 428.

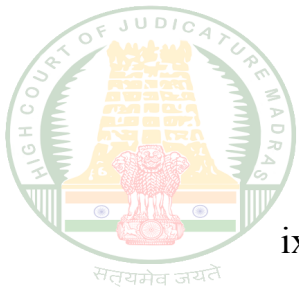


W.P.Nos.5978 and 5983 of 2020

29. With these contentions, the learned counsel for the Petitioner would urge this Court to declare sub-rule 4 to Rule 36 of the respective GST Rules as *ultra vires* the respective GST Acts as well as violative of Article 14 of Constitution of India.

30. In support of above contention, the learned counsel for the Petitioner placed reliance on the following decisions of the Hon'ble Supreme Court and that of various High Courts:-

- i. **Union of India Vs. Bharti Airtel Limited and others**, 2021 VIL 87 SC.
- ii. **Suncraft Energy Private Limited and another Vs. The Assistant Commissioner, State Tax, Ballygunge Charge and others**, 2023 VIL 487 CAL.
- iii. **The Assistant Commissioner of State Tax, Ballygunge Charge and others Vs. Suncraft Energy Private Limited and others**, 2023 VIL 99 SC.
- iv. **On Quest Merchandising India Private Limited Vs. Government of NCT of Delhi and others**, 2017 VIL 544 DEL.
- v. **Commissioner of Trade and Taxes, Delhi Vs. Arise India Limited**, 2018 VIL 01 SC.
- vi. **M/s.Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur Vs. The State of Maharashtra and others**, 2012 VIL 37 BOM.
- vii. **Gheru Lal Bal Chand Vs. State of Haryana and another**, 2011 VIL 120 P & H.
- viii. **Diya Agencies Vs. The State Tax Officer and others**, 2023 VIL 629 KER.



W.P.Nos.5978 and 5983 of 2020

WEB COPY

- ix. **Praveen Bhaskaran (Proprietor) M/s. Galaxy Traders Vs. Union of India, Represented by its Secretary, Ministry of Finance, New Delhi and others, 2023 VIL 676 KER.**
- x. **M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, Chennai, 2017 VIL 123 MAD.**
- xi. **The Assistant Commissioner (CT), Chennai Vs. Sri. Vinayaga Agencies, 2020 (4) TMI 141.**
- xii. **The Assistant Commissioner (CT), Chennai and another Vs. Sri Vinayaga Agencies, 2021 (2) TMI 1037.**
- xiii. **Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, Uttar Pradesh, Lucknow, 1986 VIL 05 SC.**
- xiv. **M/s.D.Y.Beathel Enterprises Vs. The State Tax Officer (Data Cell), Tirunelveli, 2021 VIL 308 MAD.**
- xv. **Society for Tax Analysis and Research Vs. Union of India and others, TS 1151 HC 2019 (GUJ) NT.**
- xvi. **Sales Tax Bar Association (Regd.) and another Vs. Union of India and others, TS 1152 HC 2019 (DEL) NT.**
- xvii. **Himanshu Mohta and Associates Vs. Union of India and others, TS 1153 HC 2019 (DEL) NT.**
- xviii. **Myres Tyre Supply (India) Limited Vs. The Assistant Commissioner (ST), Madurai and others in W.A.(MD) No.345 of 2019 dated 26.02.2020.**
- xix. **Myres Tyre Supply (India) Limited Vs. The Assistant Commissioner (ST), Madurai and others in W.P.(MD) Nos.18723 and 18724 of 2018 dated 26.02.2020.**
- xx. **General Officer Commander-in-Chief Vs. Subhas Chandra Yadav, AIR (1988) SC 876.**
- xxi. **Kunj Behari Lal Butail and others Vs. State of Himachal Pradesh and others, (2000) 3 SCC 40 / 2000 SCC OnLine SC 428.**



W.P.Nos.5978 and 5983 of 2020

WEB SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT:-

31. On the other hand, the learned Senior Standing Counsel for the 1st Respondent in W.P.No.5978 of 2020 and the 2nd Respondent in W.P.No.5983 of 2020 submits that there are no merits in the challenge to the impugned amendment to Rule 36 of the respective GST Rules.

32. It is submitted by the learned Senior Standing Counsel for the Respondents that irrespective of Section 43A of the respective GST enactments, the restrictions can be placed under the Rules in terms of Section 41 of the respective GST enactments.

33. It is submitted by the learned Senior Standing Counsel for the Respondents that as per Section 41(1) of the respective GST enactments, the right to claim Input Tax Credit (ITC) is subject to such conditions and restrictions as may be prescribed and therefore it is submitted that the restrictions in Rule 36(4) of the respective GST Rules is well within the ambit of Section 41 of the respective GST enactments.

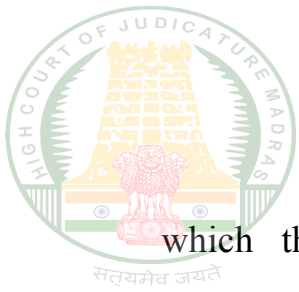


W.P.Nos.5978 and 5983 of 2020

WEB COPY 34. It is submitted by the Respondents that Rule 36(4) of the respective GST Rules is a benevolent provision in the nature of a concession as it allows credit even in respect of supplies where the invoices or debit notes have not been furnished by the suppliers under Section 37(1) of the respective GST Acts and tax not deposited with the Government.

35. It is submitted by the Respondents that if not for the impugned Rule 36(4) of the respective GST Rules, in view of the prohibition under Section 16(2)(c) of the respective GST Acts, the recipient of the supply shall not be entitled to take any credit. The allowance of 20%, 10%, and presently 5% of the eligible credit available in respect of invoices or debit notes which have neither been furnished in the returns by the supplier nor the tax deposited with the Government lessens the rigor of the prohibition imposed under Section 16(2)(c) read with Sections 16(1), 41 and 42 of the Central Goods and Services Tax (CGST) Act, 2017.

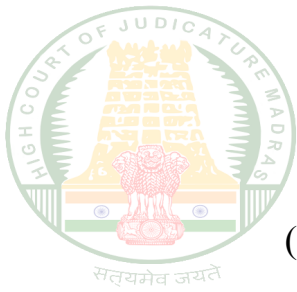
36. It is submitted by the Respondents that the legal position under the respective GST Acts read with the CGST Rules regarding the recipient's entitlement to take Input Tax Credit (ITC) on inward supplies, the details of



which the supplier neither furnished in his returns nor deposited the

corresponding tax charged with the Government can be summarized thus:

- (a) Input Tax Credit (ITC) is a concession extended by the legislature. It is subject to conditions, restrictions and prohibitions stipulated in the Act and prescribed in the Rules. An assessee does not have an absolute right to Input Tax Credit, it is circumscribed and contingent upon the satisfaction of the restrictions and conditions imposed by law.
- (b) It is completely within the prerogative of the Government to grant a concession and the degree of concession. The recipient of such concessions does not have any legally enforceable right to demand the degree of concession granted, except to enjoy the benefits of the concession during the period of grant. In this regard, he rely on the decision of the Hon'ble Supreme Court in State of **Rajasthan and others Vs. J.K.Udaipur Udyog Limited and others**, 2004 (7) SCC 67.
- (c) The very entitlement of a registered person to take credit of input tax *per se* is subject to such conditions and restrictions as may be prescribed. Thus, the power to prescribe conditions and restrictions, including the power to prescribe limitation on the amount of credit that a registered person is entitled to has been conferred on the Government.
- (d) A registered person shall not be entitled to take credit if the tax charged on the inward supply of goods or services or both has not been actually paid to the Government. This prohibition is absolute in its character and is made subject only to the provisions of Section 41 of the Act.
- (e) A registered person may be entitled to take credit of eligible input tax, as self-assessed, in his return; the credit of such Input Tax Credit (ITC) in the electronic credit ledger of the registered person is provisional.
- (f) The entitlement of the registered person to take Input Tax Credit (ITC), as self-assessed in his return, is also subject to such conditions and restrictions as may be prescribed.



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W.P.Nos.5978 and 5983 of 2020

- (g) Where the Input Tax Credit claimed by a recipient has a discrepancy with regard to the outward supplies furnished by the supplier or the tax actually paid to the Government, and if such discrepancy is not resolved even after an intimation to the supplier and recipient, such duplication of Input Tax Credit (ITC) shall be added to the output tax liability of the recipient.
- (h) However, as a measure of concession to lessen the rigor to Section 16(2)(c), Rule 36(4) of the respective GST Rules permits a registered person even in those cases where the supplier has neither furnished the details of his outward supplies nor deposited the tax with the Government, to avail credit not exceeding 20% / 10% / 5% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers.
- (i) The power to make Rule 36(4) under the CGST Rules can be traced to both Section 16(1) and Section 41 read with Section 164 of the CGST Act.
- (j) If not for Rule 36(4), a registered person would be entitled to 0% of the credit in relation to supplies received by him due to the prohibition under Section 16(2)(c). If the prayer of the petitioner is granted, it would deprive the petitioner and other assesseees of Input Tax Credit in *toto*.

37. Learned Senior Standing Counsel would also submit that merely because Rule 36(4) of the respective GST Rules could also be traced to Section 43A of the respective GST Acts when it is notified, it cannot be construed to mean that it could not be traced to Sections 41(1) and 16(1) of the respective GST Acts. Therefore, it is submitted that the impugned Rule 36(4) is *intra vires* the respective GST Acts.



W.P.Nos.5978 and 5983 of 2020

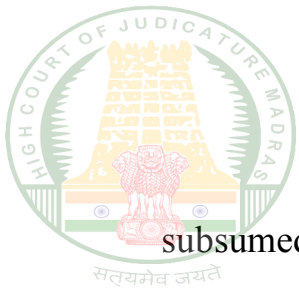
WEB COPY 38. Therefore, with these contentions, the learned Senior Standing Counsel for the Respondents in both the Writ Petitions sought for dismissal of these Writ Petitions and would urge this Court to uphold the validity of the impugned Rule 36(4) of the respective GST Rules.

39. In support of his contention, the learned Senior Standing Counsel for the Respondent has placed reliance on the following decisions of the Hon'ble Supreme Court and that of this Court:-

- i. **State of Rajasthan and others Vs. J.K.Udaipur Udyog Limited and others**, 2004 (7) SCC 67.
- ii. **M/s.P.R.Mani Electronics Vs. Union of India**, MANU/TN/3610/2020.

40. We have heard the learned counsel for the Petitioner, the learned Senior Standing Counsel and the learned Additional Government Pleader for the Respondents.

41. GST enactments were implemented with effect from **01.07.2017**. The implementation of GST enactment was an ambitious attempt to integrate various indirect taxes and modernize the tax collection. These enactments



W.P.Nos.5978 and 5983 of 2020

subsumed various Central and State Indirect Tax enactments which were in force till then. These GST enactments were enacted to bring an end to the uncertainty in the tax rates that prevailed till then in various States for the same commodity.

42. The implementation of the GST enactments though were made in a hurry with effect from **01.07.2017** without it being implemented in a phased manner. Therefore, the GST enactments did encounter several difficulties on account of the gap between the expectation and fulfilling the object behind the implantation of GST enactments and the difficulty in implementing the GST regime on the electronic platform.

43. Thus, the GST council constituted under Article 279A of the Constitution of India had after much deliberation approved the Rules and the notification was issued for successful roll out and implementation of GST enactments pan India.

44. The incidence of tax borne by the recipient of goods and / or services which was to be paid by the suppliers of goods and / or services was made uniform pan India. A single return at each stage of supply both under the



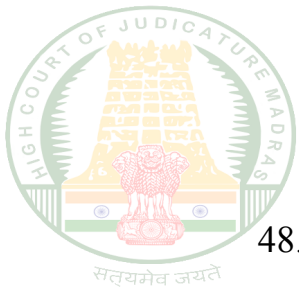
W.P.Nos.5978 and 5983 of 2020

Central and the State GST enactments was contemplated and to facilitate the recipient of goods and / or services to avail Input Tax Credit (ITC) seamlessly.

45. GST which was conceived and implemented in the back ground of rich experience gained earlier from the early 1980's with the successful implementation of PROFORMA CREDIT / MODVAT Credit under the Central Excise and Salt Rules, 1944 (later Central Excise Rules, 1944) which allowed various tax paid under the Central Excise Act, 1944, Central Excise Tariff Act, 1975 and cess levied and collected under various enactments as Input Tax Credit (ITC) for being set-off against final duty payable on final product.

46. They were inspired from the Canadian Model of Income Tax. Later, in 2000, MODVAT Credit transformed itself into CENVAT Credit Rules under the provisions of the Central Excise Rules, 1944.

47. Still later the CENVAT Credit Rules under the provisions of the Central Excise Rules, 1944 transformed itself into a standalone Rule under the CENVAT Credit Rules, 2001. It was later substituted with CENVAT Credit Rules, 2002 and eventually as CENVAT Credit Rules, 2004 with effect from **10.09.2004**. CENVAT Credit Rules, 2004 was in force till **30.06.2017**.



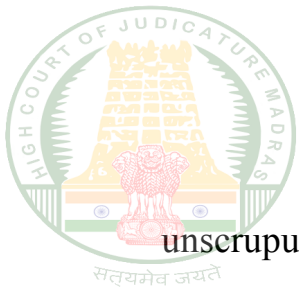
W.P.Nos.5978 and 5983 of 2020

48. In the same spirit, the GST enactments were implemented to allow the recipient of goods and / or service liable to pay tax on the out supply on the tax paid on the supply of input goods and service.

49. During the interregnum, Input Tax Credit (ITC) was also allowed on capital goods from 1994 under the provisions of the Central Excise Rules, 1944. Further, liberalization was made with the implementation of the Service Tax Credit Rules, 2002 by allowing a provider of taxable service to avail Input Tax Credit (ITC) on service tax paid on input services.

50. With effect from **10.09.2004**, Input Tax Credit (ITC) was made available on both Service Tax and Central Excise Duty including Additional Duty of Customs payable under the provisions of the Central Excise Tariff Act, 1975 and various cess that were being levied under various Finance Acts for being set off against Service Tax liability, Central Excise Duty and Cess liability under CENVAT Credit Rules, 2004.

51. The above experience led to enactment of various State Value Added Tax enactments by each of the States and Union Territory from the year 2004, 2005 and 2006. However, VAT enactments were abused by several



W.P.Nos.5978 and 5983 of 2020

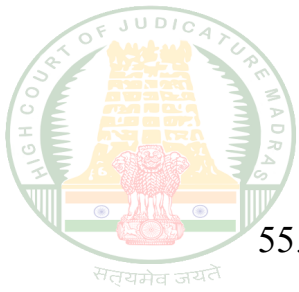
unscrupulous dealers leading to huge leakage State Revenue in each of the

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52. However, when GST enactments were implemented, the Government thought it fit to allow the credit in a calibrated manner so that revenue leakages can be minimised and contained. This was also discussed in the meeting of GST Council.

53. Therefore, for a successful implementation of the GST laws, a system was evolved to allow Input Tax Credit (ITC) electronically subject to statutory compliances not only by the supplier of goods and / or service but also by the recipient of such goods and service.

54. The respective GST enactments also allowed dealers and registered persons under the previous regime to transition unutilized credit under the previous regime / under the new regime. Therefore, provisions for transitioning the unutilized credit under the previous regime were also incorporated under the CGST and respective State GST enactments.



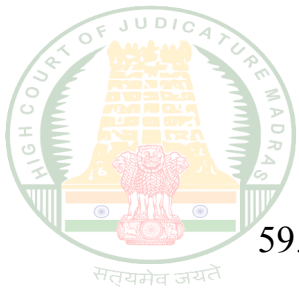
W.P.Nos.5978 and 5983 of 2020

55. Thus, various Returns were contemplated which had to be filed electronically by the assessee registered under the provisions of the respective GST enactments to not only enable them to pass on Input Tax Credit (ITC) but also to avail credit.

56. This was to ensure that Input Tax Credit (ITC) was available in the hands of such recipient of goods and / or service subject to proper filing of Returns contemplated under the respective GST enactments and the GST Rules by each of the stake holders.

57. Restrictions were placed under the respective GST Rules as experience under the previous regime had demonstrated that the facility of Input Tax Credit (ITC) was abused by unscrupulous dealers by resorting to circular trading and bill trading by either passing on ineligible Input Tax Credit (ITC) or without actual payment of tax and supply of goods.

58. Since GST laws were to allow credits electronically in the Electronic Credit Ledger contemplated under the CGST Act and the respective State GST enactments and the Rules made thereunder, they had fair share of technical glitch in the beginning.

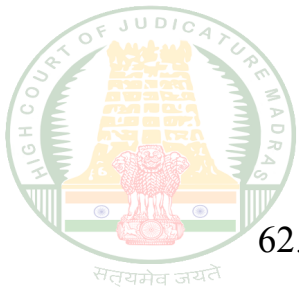


W.P.Nos.5978 and 5983 of 2020

59. They have been ironed out over a period of time and most of the technical issues have been resolved to ensure that the object to allow credit is fulfilled and tax paid by the supplier of goods and / or service is allowed as Input Tax Credit (ITC) subject to proper statutory compliance by both supplier of goods and / or service and recipient of goods and / or service under the respective GST enactments and the Rules made thereunder.

60. If the supplier fails to furnish the details in the returns under Section 37(1) of the CGST and respective State GST enactments, restricted credit was allowed. Initially, it was allowed at 20%. Later, it was reduced to 10% and still later it was reduced to 5%. Eventually, no Input Tax Credit (ITC) was to be allowed if the details required under Section 37(1) of the respective GST enactments were not furnished by the supplier of goods and / or service.

61. These restrictions were placed as the system i.e., Information and Technology (IT) Platform that was developed by the IT wing of the Government did not address to all the concern behind the object of the implementation of respective GST enactments. Thus, restricted credit was allowed till details were uploaded by the supplier.



W.P.Nos.5978 and 5983 of 2020

62. It has to be borne in mind that the basic feature of the respective GST enactments and the Rules made thereunder is to allow a recipient of such goods and / or service or both who are themselves engaged in supply of taxable goods and / or services or both or supply of zero rated supply of goods and / or service or both (i.e., output supply) to avail Input Tax Credit (ITC) on the tax borne by them on such inward supplies.

63. This object is traceable to the MODVAT Rules referred to supra. Trade Notice No.38/1999 dated 2nd April, 1991 issued by the Bombay Collectorate in its clarification issued in the context of the MODVAT Scheme. It clarified the object of MODVAT Scheme as below:-

“the basic aim of the Modvat Scheme is to avoid the cascading effect of duties on a product. Therefore, the scheme permits Modvat credit on all goods forming a part of the final product, though the final product may be manufactured in several stages, provided duty is paid at each stage of the manufacturing chain.

64. This view was also echoed in the following passage by the Hon’ble Supreme Court in **“Collector of Central Excise, Pune Vs. Dai Ichi Karkaria Limited”**, [1999] 112 ELT 353:-

“18. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on



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W.P.Nos.5978 and 5983 of 2020

raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

19. It is, therefore, that in the case of ***Eicher Motors Ltd. Vs. Union of India., [1999(106) ELT 3]*** this Court said that a credit under the MODVAT scheme was as good as tax paid.”

65. Recently also, the Hon’ble Supreme Court in “**Union of India Vs. Cosmo Films Limited**”, 2023 (385) E.L.T. 66 (S.C.) reiterated the above position in the context of the respective GST enactments wherein it was observed as under:-



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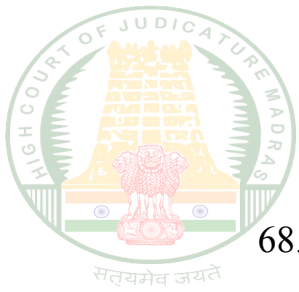


W.P.Nos.5978 and 5983 of 2020

“The GST regime is based on the idea of removing cascading effect of the taxes. The cascading effect of taxes mean levy of tax on tax. The GST is levied on the net value added portion and not on the entire transaction value as the taxpayer would enjoy input tax credit. Barring few indirect taxes, all the major indirect taxes levied by the Central and State Governments are subsumed into the GST. Consequently, taxpayers and suppliers are untroubled about paying multiple indirect taxes under different laws. In the GST framework, simple rules have been prescribed to utilize the cross-sectional credit of input taxes. A trader who could not claim credit of tax paid on services, can seek and get credit on goods as well as services. This framework of seamless credit was introduced to safeguard that taxes on supplies are paid to the extent of value additions and net liability - and to avoid double taxation.”

66. It has to be borne in mind that the GST Council as also the Government were aware of the bitter experience under the VAT regime due to ineligible Input Tax Credit (ITC) being passed on and availed on the strength of either fake and / or fictitious invoices.

67. They were also aware of the huge leakage of revenue under the VAT regime where without actual supply of goods and corresponding payment of tax, ineligible Input Tax Credit (ITC) had been passed on leading to leakage of colossal amount of revenue. Thus, it is with this objective in mind, restrictions were placed under the Rules.



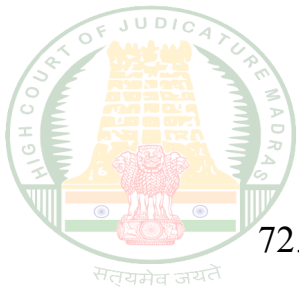
W.P.Nos.5978 and 5983 of 2020

68. The GST council which consists of the elite body of Finance Ministers of the respective States is duly assisted by the Officers of Union Finance Ministry with their rich experience and knew the pitfalls and dangers which they were to face when they rolled out the GST enactments with effect from **01.07.2017**.

69. The system that prevailed under the previous regime did not provide adequate disclosure by the supplier of goods resulting in availing of ineligible and bogus Input Tax Credit (ITC) without corresponding / payment of tax or duty thereby defeating the very benevolent of object under the scheme.

70. As far as Input Tax Credit (ITC) is concerned, the substantive provision that is relevant in the GST enactments is Section 16 of the CGST Act and the respective State GST Acts, **TNGST Act** for the state of Tamil Nadu.

71. The language in Section 16(1) of the respective GST Acts is that every registered person shall be entitled to take credit of Input Tax charged on any supply of goods or service or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.



W.P.Nos.5978 and 5983 of 2020

72. The rider to avail the Input Tax Credit (ITC) in Section 16 of the respective is subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49 of the GST Acts. The further requirement for availing Input Tax Credit (ITC) validly under Section 16 are contained in sub-clause (2) to Section 16 of the respective GST Acts. At the time of initial incorporation of Section 16 in the respective GST Acts with effect from **01.07.2017**, in sub-clause (2)(a) to Section 16, there was no reference to Section 37 of the respective GST Acts.

73. For the sake of clarity, Section 49 of the CGST Act reads as under:-

“49. Payment of tax, interest, penalty and other amounts.—

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act



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W.P.Nos.5978 and 5983 of 2020

or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax [Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;];

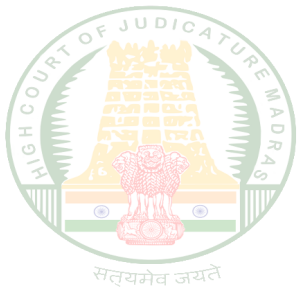
(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax: [Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.



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W.P.Nos.5978 and 5983 of 2020

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:— (a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74.

(9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.—For the purposes of this section,— (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger; (b) the expression,— (i) -tax dues? means the tax payable under this Act and does not include interest, fee and penalty; and (ii) -other dues? means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

(10) [A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1).

74. Reference was made to Section 37 of the respective GST Acts in Section 16 of the respective GST Acts for the first time only vide amendment to Section 16(2)(a) of the Act vide **Finance Act, 2021** with effect from



W.P.Nos.5978 and 5983 of 2020

01.01.2022. Section 16(1) and (2) of the respective GST Acts as it stood at the

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implementation in the year 2017 and as it stands now is captured below:-

Section 16 of the CGST Act with effect from 01.07.2017	Section 16 of the CGST Act with effect from 01.10.2023
16. Eligibility and conditions for taking Input Tax Credit. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course of furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. (2) Notwithstanding anything contained in this Section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed; (b) he has received the goods or services or both. Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered	16. Eligibility and conditions for taking Input Tax Credit. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. (2) Notwithstanding anything contained in this Section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed; [(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner



Section 16 of the CGST Act with effect from 01.07.2017

person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person. (c) subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under Section 39.

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

Provided also that the recipient shall be entitled to avail of the credit of input tax

Section 16 of the CGST Act with effect from 01.10.2023

specified under Section 37. (b) he has received the goods or services or both.

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title of goods or otherwise.

(ii) where the services are provided by the supplier to any person on the direction of and an account of such registered person.

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under Section 38 has not been restricted.

(c) subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

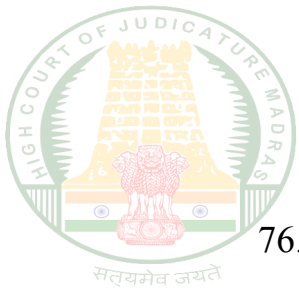
(d) he has furnished the return under Section 39.

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon



Section 16 of the CGST Act with effect from 01.07.2017	Section 16 of the CGST Act with effect from 01.10.2023
on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.	recipient of the last lot or instalment. Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [paid by him along with interest payable under Section 50], in such manner as may be prescribed. Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

75. Thus, under the substantive provision for availing Input Tax Credit (ITC) is Section 16 of the GST Act, **conditions or restrictions in availing Input Tax Credit (ITC)** could be imposed in the manner specified in Section 49 of the GST Acts which gives the power to the Central Government.

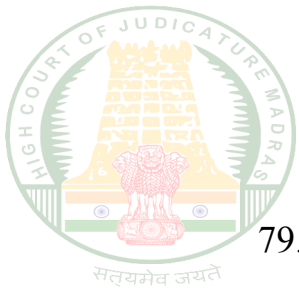


W.P.Nos.5978 and 5983 of 2020

76. Thus it is evident that the conditions and restrictions can be prescribed. The expression in Section 16(1) of the respective GST Acts i.e., subject to such conditions and restrictions as may be prescribed in the manner specified in Section 49 of the respective GST Acts must be read conjunctively with Section 37 of the respective GST enactments.

77. It is for this reason, Rule 36(4) of the respective GST Rules was incorporated in 2019 vide amendments to the respective GST Rules to ensure that full credit could be availed subject to the supplier also additionally complying with the requirements under Section 37(1) of the respective GST enactments.

78. Apart from the above, the experience gained under the initial experiments made under the provisions of the Central Excise Rules, 1944 from the days of implementation of PROFORMA CREDIT to MODVAT CREDIT to CENVAT CREDIT [from mid 1980s to 2004] and under the VAT regime under the various VAT enactments of the States and the experience gained immediately after the implementation and roll out of the GST laws, led the Government to allow restricted credit if there was no compliance by the supplier of the requirement of Section 37(1) of the respective GST enactments.



W.P.Nos.5978 and 5983 of 2020

79. These restrictions were placed to ensure that unscrupulous persons who were indulging in Circular Trading / Bill Trading by generating invoices without actual supply of goods or services or both could not continue with their nefarious activities leading to the loss to Exchequer and leakage of revenue of the State and Centre.

80. These restrictions were placed to ensure that mere obtaining registrations under the respective GST enactments and filing of few Returns alone were not sufficient to allow 100% credit by a recipient of goods or service or both under the new regime under the respective GST enactments.

81. The system which had inherent weakness and allowed exploitation to the hilt by the unscrupulous persons by masquerading as registered dealers on paper to facilitate passing of ineligible Input Tax Credit (ITC) for discharging the tax liability was thus regulated with the insertion of Rule 36(4) into the respective GST Rules in **2019** with effect from **09.10.2019**.

82. Insertion of Rule 36(4) into the respective GST Rules in the year 2019 was intended to not only protect the interests of the Government but also the dealers / registered tax payers under the respective GST enactments so that



they are not later exposed to recovery proceedings if the tax was not indeed

paid by the supplier of goods and / or service.

83. That apart, credit availed under the respective regimes were and are provisional and could and can be called upon to be paid back or reversed. In this connection, a reference is also made to the decision of the Hon'ble Supreme Court in **“The State of Karnataka Vs. M/s.Ecom Gill Coffee Trading”**, (2023) 18 SCC 809 : (2023) 111 GSTR 1 : 2023 SCC OnLine SC 248, wherein it was held as under:-

“22. In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars, etc. and the actual physical movement of the goods by producing the cogent materials, the assessing officer was absolutely justified in denying ITC, which was confirmed by the first appellate authority. Both, the second appellate authority as well as the High Court have materially erred in allowing ITC despite the purchasing dealers concerned having failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per Section 70 of the KVAT Act, 2003. The impugned judgment(s) and order(s) passed by the High Court [State of Karnataka v. Tallam Apparels, 2021 SCC OnLine Kar 15785]· [State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd., 2021 SCC OnLine Kar 15783]· [CCT v. Rajshree Impex, 2021 SCC OnLine Kar 15784]· [Transworld Star Manjushree v. CCT,



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W.P.Nos.5978 and 5983 of 2020

2021 SCC OnLine Kar 15782] and the second appellate authority allowing ITC are unsustainable and deserve to be quashed and set aside and are hereby quashed and set aside. The orders passed by the assessing officer denying ITC to the purchasing dealers concerned, confirmed by the first appellate authority are hereby restored.”

84. The above view was also followed by a Division Bench of this Court in **“Tvl. Sahyadri Industries Limited Vs. State of Tamil Nadu”** in the context of Input Tax Credit (ITC) on **18.04.2023** in **T.C.Nos.19, 20 & 21 of 2022** and **W.A.Nos.2607 & 2618 of 2021 & 451 of 2022 etc., batch.**

85. Both the aforesaid decisions have been rendered after the implementation of the respective GST enactments but in the context of VAT regime. Former case dealt with the Karnataka VAT Act, 2005 while the latter case dealt with TNVAT Act, 2006. They highlight the bitter experience faced by the tax administration by the State in its attempt to modernize the tax administration.

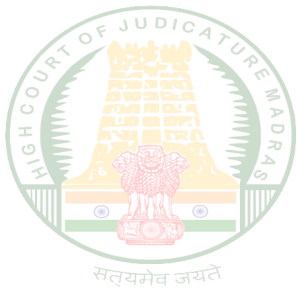
86. In **“Calcutta Gujarati Education Society Vs. Calcutta Municipal Corporation”**, (2003) 10 SCC 533, the Hon’ble Supreme Court held that the rule of reading down a provision of law is a rule of harmonious construction in



WEB COPY a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the garb of “reading down”, however, it is not open to read the words and expressions not found in it and to venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes.

87. In “**B.R.Enterprises Vs. State of U.P.**”, (1999) 9 SCC 700, which was followed by the Hon’ble Supreme Court in **Calcutta Gujarati Education Society (cited *supra*)**, the Court held as under:-

“First attempt should be made by the courts to uphold the charged provision and not to invalidate it merely because one of the possible interpretations leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, maye beneficial, penal or fiscal etc. Cumulatively, it is to subserve the object of the legislation. Old golden rule is of respecting the wisdom of legislature that they are aware of the law and would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be



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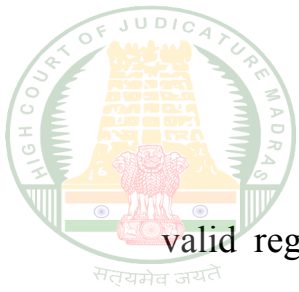


W.P.Nos.5978 and 5983 of 2020

saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from preamble, Objects, the scheme of the Act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. ... This principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power.”

88. The Judgment of the Hon’ble Delhi High Court in “**On Quest Merchandising India Private Limited Vs. Government of NCT of Delhi & Others**” in **W.P. (C) 6093/2017**, cited by the Petitioner in support of its contentions would not be applicable to the facts of the present case.

89. In the aforesaid case, the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax, 2004 was challenged. To be eligible for ITC, the purchasing dealer who, apart from being registered under the DVAT Act, had to verify that the selling dealer was also a registered dealer and was holding a



valid registration under the DVAT Act. Section 9(2)(g) of the Delhi Value

Added Tax, 2004 reads as under:-

(2) No Tax credit can be allowed

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. *To the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."*

90. There, the Hon'ble Delhi High Court in the facts and circumstances

held as follows:-

"53. In the light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9(2)(g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transaction in Annexure 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9(2)(g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has bonafide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number.



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W.P.Nos.5978 and 5983 of 2020

In the event the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across the material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the Act.”

91. The above view is not correct and in any event cannot be applied to hold that Rule 36(4) of the respective GST Rules are arbitrary for the reasons explained by us. We had also taken a contra stand in **Tvl. Sahyadri Industries Limited's case** (cited *supra*).

92. Relevant portion of **Tvl. Sahyadri Industries Limited's case** (cited *supra*) is extracted hereunder:-

“131. In our view, input tax credit can be denied only if the invoices issued to the petitioners/appellants by the registered dealers were bogus invoices and/or invariance with the office copy of the invoice maintained at the registered dealers end who effected such sale to the petitioners/appellants and where there was no movement of goods for the corresponding value declared in the original copy of invoice contemplated under Rule 10(2) of TN VAT Rules, 2007.

132. However, if the petitioners/appellants have paid for value of goods reflected in the original copy of the invoice in their custody and there is no dispute on the same, mere mismatch in credit information gathered at the registered dealers end who effected sale to petitioners/appellants is of no consequence if there are collateral evidence to show the movement of goods for the value to the petitioners/appellants or



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W.P.Nos.5978 and 5983 of 2020

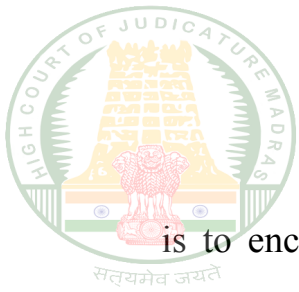
their consignees directly. Under these circumstances, we are of the view that credit cannot be denied to that extent and the only option available for the authorities is to recover tax not paid by such dealer by invoking the machinery under TN VAT Act, 2007.

*133. If a dealer claims input tax credit on purchases, such dealer/purchaser will have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax original invoices would not be sufficient to claim ITC in the light of the decision of the Hon'ble Supreme Court in **M/s.Ecom Gill Coffee Trading Private Limited**.*

*134. Therefore a dealer claiming ITC has to prove the actual transaction of sale by furnishing the name and address of the selling dealer, details of the vehicle which was/were used for delivery of the goods, tax invoices and payment particulars etc. The above information would be in addition to tax invoices, particulars of payment etc., as held by the Hon'ble Supreme Court in **M/s.Ecom Gill Coffee Trading Private Limited**.*

*135. In the light of the above decision of the Hon'ble Supreme Court and in the light of the above discussion, we hold that the challenge to the impugned orders in T.C.Nos.19 to 21 of 2022 has to fail. Considering the fact that there is no challenge by the Commercial Tax Department insofar as the benefit of decision of this Court in **Jinsasan Distributors** case referred to supra has been conferred the rights that have already crystallized in favour of the assessee/petitioners in T.C.Nos.19 to 21 of 2022 alone are not disturbed. Since the cases have been remitted back, these petitioners shall file their reply within 30 days. The authority shall pass orders in the light of the observation contained herein."*

93. This view also cannot be applied in the changed circumstances under the GST enactments. To allow Input Tax Credit (ITC) without any restrictions



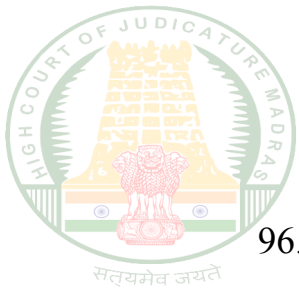
W.P.Nos.5978 and 5983 of 2020

is to encourage even ineligible credit being availed which are passed on by

unscrupulous persons by merely obtaining GST registration.

94. Similarly, the decision of the Hon'ble Punjab and Haryana High Court in **Gheru Lal Bal Chand's case** (cited *supra*), relied by the Petitioner, where the constitutional validity of a similar Section 8 of the Haryana VAT Act, 2003 was being considered, the Court held that law cannot envisage an almost impossible eventuality and that law nowhere envisages imposing penalty either directly or vicariously where a person is not connected with any such event or an act. Thus, it is not the case in the present dispute.

95. The present Writ Petitions were filed in the month of February, 2020 after the implementation of the GST enactments. The GST enactments then were not as evolved as they are at present. However, after these Writ Petitions were filed, the provisions have been strengthened to facilitate a legitimate entrepreneur and / or a business entity to avail Input Tax Credit (ITC) with the incorporation of **Form GSTR – 2A** under Rule 61 of the respective GST Rules vide **Notification No. 79/2020 Central Taxes (CT)** dated **15.10.2020** with effect from **15.10.2020**.



W.P.Nos.5978 and 5983 of 2020

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96. With the incorporation of **Form GSTR 2A**, a dealer registered under the provisions of the respective GST enactments is entitled to Input Tax Credit (ITC) on the tax paid / borne on the tax paid by the supplier of goods or service or both. It is auto-populated. It is available on the dashboard. Based on the details of auto drafted inward supplies, the system now enables the recipient of goods or service to avail Input Tax Credit (ITC) based on the stipulations in Section 16 of the respective GST enactments and by drawing the information from the system in **FORM GSTR – 1, 5, 6, 7 and 8**.

97. Thus, the system has evolved to allow a recipient to avail Input Tax Credit (ITC) on the tax paid / borne on the tax paid by the supplier of goods or service or both. Prior to that the Input Tax Credit (ITC) was being allowed without the details being furnished at 20% , 10%, 5% as detailed in Table II of this Order has become irrelevant.

98. Once the details are captured, it enabled system and in the returns filed by the supplier of goods or services. The recipient is entitled to avail full Input Tax Credit (ITC). With effect from **15.10.2020** vide **Notification No.79/2020, Central Taxes (CT)** dated **15.10.2020**, the issue has been fully resolved. Perhaps, it is for this reason why restricted Input Tax Credit (ITC)



W.P.Nos.5978 and 5983 of 2020

was allowed at 20% which was later reduced to 10% and thereafter reduced to 5% was removed by amendment to Rule 36(4) vide Notification No.40/2021-Central Tax (CT) dated 01.01.2022 / 10th (Amendment) Rules, 2021 under CGST Rules and vide Notification No.SRO A/24(d)/2021 dated 30.12.2021 / 10th (Amendment) Rules, 2021 under TNGST Rules.

99. In our view, the amendment to Rule 36(4) starting from Notification No.49/2019-Central Tax (CT) dated 09.10.2019 / 6th Amendment Rules, 2019 as far as CGST Rules and Notification No.SRO A-39(a)/2019, dated 11.10.2019 / 6th Amendment Rules, 2019 as far as TNGST Rules allowing restricted availment of Input Tax Credit (ITC) at 20%, thereafter at 10% and later at 5% was intended to benefit the recipient to ensure that at least a portion of the Input Tax Credit (ITC) was available pending furnishing of the documents with regard to return by the supplier of goods or service.

100. This restricted availment of Input Tax Credit (ITC) itself has been now phased out in the IT system, since the IT system has been fully evolved with the incorporation of **Form GSTR 2A** vide **Notification No.79** dated **15.10.2020**. Credit will be auto-populated. Therefore, the credit is available which is auto-populated in **Form GSTR 2A**. Input Tax Credit (ITC) that is

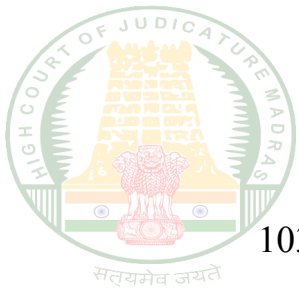


W.P.Nos.5978 and 5983 of 2020

WEB 101. ~~violations~~ ~~either at the suppliers end or at the the recipient's end.~~ ~~availed~~ is provisional. It can be asked to be paid back, if there are, any

101. Restrictions imposed under Rule 36(4) of the respective GST Rules to avail full credit of Input Tax in absence of the mandatory compliance by the supplier of goods or service as is contemplated under Section 37(1) of the respective GST Acts was a temporary measure to regulate the availing of Input Tax Credit (ITC). *Ipsa facto*, it cannot be held that Rule 36(4) of the respective GST Rules is in violation of Article 14 of the Constitution of India.

102. We are not able to discern any violation of Article 14 of the Constitution of India by virtue of the restrictions under Rule 36(4) of the respective GST Rules. That apart, there is a presumption of constitutionality of GST enactments and Rules framed under the enactments. The restrictions were placed with a view to implement the object of allowing legitimate Input Tax Credit on the goods or service supplied by the supplier of goods or service as the case may be by a recipient who was liable to pay tax on the output supply was engaged in Zero Rated Supply within the meaning of the respective GST enactments including Integrated Goods and Service Tax and the Rules made thereunder.



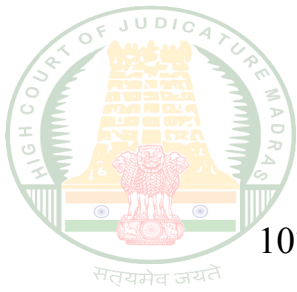
W.P.Nos.5978 and 5983 of 2020

103. That apart, the restrictions are reasonable and since they are intended to implement the laudable object of allowing legitimate / eligible Input Tax Credit (ITC). Therefore, the challenge to the restrictions imposed under Rule 36(4) of the respective GST Rules on the ground of it being arbitrary and violative of Article 14 of the Constitution of India cannot be countenanced. As such, these Writ Petitions are liable to be dismissed.

104. In any event, as mentioned above, the temporary deprivation of full Input Tax Credit (ITC) has now been resolved with the implementation of **Form GSTR 2A** vide **Notification No. 79** dated **15.10.2020**.

105. Thus, the issue had also become academic at this distant point of time as the IT system has evolved. It enables the recipient to avail Input Tax Credit (ITC) on the strength of informations reflected in **Form GSTR 2A** inserted vide **Notification No.79** dated **15.10.2020**.

106. However, the counsels argued the case as if the Petitioner was being deprived of the Input Tax Credit (ITC) on account of insertion of Rule 36(4) of the respective GST Rules. We are not impressed with the submission of the Petitioner.



W.P.Nos.5978 and 5983 of 2020

107. In the result, the challenge to Rule 36(4) of the respective GST

Rules as violative of Article 14 of the Constitution of India is not made out.

108. We are of the view that these Writ Petitions ought to have been withdrawn. In any event, they are liable to be dismissed with cost. However, we are refraining from imposing any cost.

109. These Writ Petitions are accordingly dismissed. No costs.

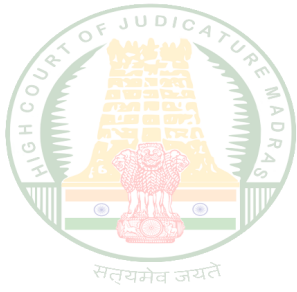
[R.S.K., J.]

[C.S.N., J.]

09.05.2025

Neutral Citation : Yes / No

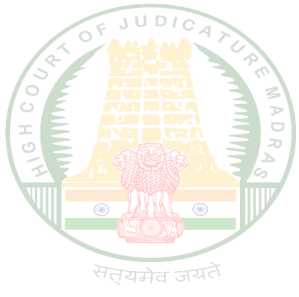
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W.P.Nos.5978 and 5983 of 2020

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1. The Revenue Secretary,
Union of India,
Department of Revenue,
Ministry of Finance,
128-A / North Block,
New Delhi.
2. The Secretary,
Government of Tamil Nadu,
Department of Commercial Taxes,
Fort St. George, Chennai – 600 006.
3. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.
4. The Assistant Commissioner (ST),
Nandambakkam State Tax Office,
17, 2nd Street, Loganathan Nagar,
Choolaimedu,
Chennai – 600 094.



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W.P.Nos.5978 and 5983 of 2020

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

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Pre-Delivery Common Order in
W.P.Nos.5978 and 5983 of 2020

09.05.2025