IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.7511 of 2024 and
W.M.P.Nos.8412 and 8414 of 2024

Manivannan Dhineshkumar
Proprietor of Arya Traders,
Sholai Complex, 136A, Near Sudha Hospital,
Perundurai Road, Erode – 638 011.
GSTIN No:33CJJPD2043J1ZJ. ..Petitioner

Vs.

1.Union of India
Represented by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

2.The Assistant Commissioner of GST & Central Excise,
Erode-I Division, No.81, Bharathi Nagar,
Soolai, Erode 638 001. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the impugned proceedings of the second respondent in order in original Sl.No.01/2024 – GST (AC) dated

16.01.2024 and to quash the same as being illegal and contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017.

For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.T.Ramesh Kutty,
Senior Standing Counsel
assisted by Mr.B.Sivaraman,
Junior Standing Counsel.

ORDER

The present writ petition is filed challenging the impugned order passed by the second respondent dated 16.01.2024 relating to the assessment year 2018-19 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 Act.

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.

4. The learned counsel for the petitioner would submit that earlier this Court has on numerous occasions, remanded on the basis of the Bill proposing the present amendment. The learned Senior Standing Counsel appearing for the respondents would submit that they would re-do the assessment taking into account the Finance (No.2) Act, 2024.

5. In view thereof, the impugned order passed by the second respondent dated 16.01.2024 is set aside. The learned assessing/adjudicating authority/respondent would re-do the assessment by taking into account the amendment referred supra. 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, after affording reasonable opportunity of personal hearing to the petitioner. In respect of other issues, if any, the impugned order shall remain undisturbed.

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

21.01.2025

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
shk

To

1.The Secretary,
Union of India
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi 110 001.

MOHAMMED SHAFFIQ, J.

shk

2.The Assistant Commissioner of GST & Central Excise,
Erode-I Division, No.81, Bharathi Nagar,
Soolai, Erode 638 001.

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