BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.03.2025

PRONOUNCED ON : 17.06.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.14543, 5198, 6655, 6953, 6954, 7301, 7610, 19861, 19972, 20653, 21039, 21306, 21934, 23476 of 2024 and 24387 of 2022, and W.M.P(MD) Nos.18478 of 2022, 4979, 6196, 6482, 6484, 6492, 6494, 6719, 6963, 12783, 12784, 16837, 16838, 16947, 16948, 17511, 17827, 18033, 18584, 18585, 19873 and 19875 of 2024

W.P.(MD)No.14543 of 2024

M/s.Orient Color Art Printers Private Limited,
Represented by its Director N.V.Muralitharan,
GSTIN 33AABC05469R1ZS,
New no.414, Old No:169 F,
Mundaga Nadar Street,
Sivakasi-626 123. ... Petitioner

Vs.

1.The Commissioner of GST & Central Excise (Appeals),
Coimbatore @ Circuit Office, Madurai,
4, Lal Bahadur Shastri Marg,
C R Buildings, Madurai-2.

2.The Superintendent of GST and Central Excise,
Vilampatti Range,
CR Building, 1/749, Pallampatti Road,
Thiruthangal, Sivakasi. ... Respondents

W.P.(MD)No.5198 of 2024:

M/s.Trichy Metals and Alloys,
Rep. by its Managing Partner S.Sivakumar,
S.F.No.536/2A, Kariyamanickam Road,
Thathamangalam, Trichy 621 112. .. Petitioner

Vs

1.The Additional Commissioner
of GST (Appeal), Coimbatore,
Circuit Office at Trichirappalli,
No.1, Williams Road, Cantonment,
Trichirappalli.

2.The Superintendent,
Central Goods and Services Tax and Central Excise,
Trichy-II Division-Musiri Range,
No.1 Williams Road, Cantonment, Trichy 620 001. .. Respondents

W.P.(MD)No.6655 of 2024:

M/s.Meena Agencies,
GSTIN 33AAPPR9880A2ZB,
Represented by its Proprietor V.C.Rajendran,
Plot No.19, Ground Floor, Panchavananm,
Kuruvikaransalai 3rd Street, Anna Nagar,
Madurai 625 020. .. Petitioner

Vs

Deputy State Tax Officer-1,
Office of the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai. .. Respondent

W.P.(MD)Nos.6953 and 6954 of 2024

M/s.DRA-SP-VM Joint Venture,
Represented by its Authorised Signatory,
Shri V.Manoharan,
No.6, Raja Dhinagar Palace, East Street,
Ramanathapuram 623 501. ... Petitioner in both W.P.'s

Vs.

1. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai 600 005.

2. The State Tax Officer,
   Ramanathapuram Assessment Circle,
   K.T.M. Complex, Salai Street,
   Ramanathapuram 623 501. ... Respondents in both W.P.'s

W.P.(MD)No.7301 of 2024

M/s.The Mens Park,
Represented by its proprietor Mrs.Famitha Sulthana
GSTIN 33ACKPF9009N1ZD,
No.70, Puthen Banglow Road,
East of Tower, Nagercoil. ... Petitioner

Vs.

1. The State Tax Officer (FAC),
   Nagercoil-1, Assessment Circle,
   Commercial Taxes Buildings,
   Nagercoil.

2. The State of Tamil Nadu,
   Represented by its Secretary,
   Commercial Taxes Department,
   Fort St.George, Chennai 600 009.

3. Union of India,
Secretary to the Government of India,
Miniostry of Finance (MOF),
Raj Path Marg, 'E' Block,
Central Secretariat, New Delhi 110011. ... Respondents

W.P.(MD)No.7610 of 2024
M/s.C.G.Engineering Constructions,
GSTIN 33AECPY8766R1ZC,
Represented by its Proprietor D.Yesunesan,
No.8/90-C, Kuruthencode, Kalkulam,
Kanyakumari District – 629 805. ... Petitioner

Vs.

The State Tax Officer,
Thuckalay-2, Assessment Circle,
Nagercoil. ... Respondent

W.P.(MD)No.19861 of 2024

Mrs.Anand Padmavathy,
Proprietrix, M/s.C S Agency,
27, Rajaraja Cholan Nagar,
Srinivasapuram, Thanjavur-613 009. ... Petitioner

Vs.

The State Tax Officer-I,
Commercial Tax Officer,
Thanjavur-I, Assessment Circle,
Thanjavur. ... Respondent

W.P.(MD)No.19972 of 2024

Mr.Antonysamy,
Proprietor,
A.M.Hardwares, 1-251A Main Road,
Serndamangalam,
Tenkasi District,
Tirunelveli, Tamil Nadu-627 857. ... Petitioner

Vs.

The Deputy State Tax Officer-2,
Sengottai Assessment Circle,
Sengottai, Tamil Nadu. ... Respondent

W.P.(MD)No.20653 of 2024:

M/s.KOG-KTV Food Products (India) Pvt. Ltd.,
Represented by its Managing Director,
Mr.K.T.V.Narayanan,
No.C-85, C-68, C-88, 2nd Main Road,
SIPCOT Industrial Complex, Madathur Road,
Tuticorin-628 002. ... Petitioner

Vs.

1.The Additional Commissioner (Appeals),
GST & Central Excise Commissionerate,
No.4, Lal Bahadur Shastri Road,
Revenue Building, B.B.Kulam,
Madurai-625 002.

2.The Assistant Commissioner of CGST
& Central Excise,
Office of the Deputy Commissioner of CGST
& Central Excise, Tuticorin Division,
C-50, SIPCOT Industrial Complex,
Tuticorin-628 002. ... Respondents

W.P.(MD)No.21039 of 2024:

M/s.Sri Saravana and Co.,
Represented by its Proprietor Murugan,
GSTIN 33ABMFS0175M1ZU,
No.1/233a, Sempatti-Oddanchatram Road,
Neelamalakottai, Dindigul-624 619. ... Petitioner

Vs.

The Deputy State Tax Officer,
Office of the State Tax Officer,
Nilakkottai Assessment Circle,
Commercial Taxes Building,
Nilakkottai. ... Respondent

W.P.(MD)No.21306 of 2024

Tvl.Meenakshi Store,
Rep. By proprietor S.Srinivasan,
No.22, Customs Lane,
Beach Road, Tuticorin,
Thoothukudi 628 001. ... Petitioner

Vs.

1. The Deputy Commissioner (ST),
   GST Appeal, Commercial Tax Building,
   K.K.Nagar, Madurai.

2. The State Tax Officer,
   Tuticorin-II Assessment Circle,
   Thoothukudi. ... Respondents

W.P.(MD)No.21934 of 2024

Tvl.Masilaa Enterprises,
Rep. By its Proprietor R.Masilabalan,
No.B1/55/4, Unjampatti,
Annanji, Theni-625 531. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Theni-I, Theni. ... Respondent

W.P.(MD)No.23476 of 2024

Mr.Anbarasan,
Proprietor,
Tvl. A.R.Designer Tiles,
10/936-1, Avudaikan Nagar,
Kurumbalaperi, Tirunelveli,
Tamil Nadu 627 806. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
(also known as Deputy Commercial Tax Officer),
Office of the Assistant Commissioner (ST),
Tenkasi Near Yaanaipalam,
Tenkasi 627 811. ... Respondent

W.P.(MD)No.24387 of 2022

M/s.Trichy Metals and Alloys,
Rep. By its Managing Partner S.Sivakumar,
S.F.No.536/2A, Kariyamanickam Road,
Thathamangalam, Trichy-621 112. ... Petitioner

Vs.

The Assistant Commissioner,
Central Goods and Service Tax and Central Excise,
Trichy-II Division,
No.1, Williams Road,
Cantonment, Trichy-620 001. ... Respondent

PRAYER in W.P.(MD)No.14543 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records on the file of the 1st Respondent in order in Appeal No.MDU-CGST-ADC-APP-32/2023 dated 31.07.2023 confirming the order dated 25.04.2022 passed by the 2nd Respondent in DIN No. 20220459X0000000BDC4 order in original no.01/Sup/CGST/VPT Range/2022 for the assessment period from July 2017 to March 2020 and quash the both as cryptic, illegal, arbitrary, wholly without jurisdiction.

PRAYER IN W.P.(MD)No.5198 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records on the file of 2nd respondent vide order in original 30/2022 dated 17.06.2022 and Appeal order passed by the 1st respondent vide A.No. 67/2022 GST(ADC)-TRY DIN No:20231159KV000000FB08 30.11.2023 and quash the same.

PRAYER IN W.P.(MD)No.6655 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus, to call for the records on the file of the respondent in GSTIN: 33AAPPR9880A2ZB/2020-21 dated 16.10.2023 and to quash the same as illegal, arbitrary, wholly without jurisdiction and in violation of Rule 36(4) of TNGST Rules, 2017 and direct the respondent to issue notice to the petitioner then pass an assessment order afresh after affording an sufficient opportunity.

PRAYER in W.P.(MD)No.6953 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records relating to the impugned assessment order No.

33AADAD7585P1Z4/2018-19 in Form GST DRC-7 dated 09.11.2023 passed by the 2nd respondent and quash the same in respect of Serial No.3 and 6.

PRAYER in W.P.(MD)No.6954 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records relating to the impugned assessment order No. 33AADAD7585P1Z4/2019-20 in Form GST DRC-7 dated 09.11.2023 passed by the 2nd respondent and quash the same in respect of Serial No.3.

PRAYER in W.P.(MD)No.7301 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records on the file of the 1st respondent in GSTIN: 33ACKPF9009N1ZD/2017-18 dated 17.10.2023 passed by the 1st respondent under Section 73 of TNGST Act 2017 and quash the same.

PRAYER in W.P.(MD)No.7610 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records on the file of the respondent in GSTIN: 33AECPY8766R1ZC/2018-19 dated 25.04.2023 and to quash the same as illegal, arbitrary, wholly without jurisdiction and direct the respondent to issue notice to the petitioner then pass an assessment order after affording an sufficient opportunity by following CBIC Circular No.183/15/2022-GST (F.No.CBIC-20001/2/2022-GST), dated 27.12.2022 within such time as may be directed by this Court.

PRAYER in W.P.(MD)No.19861 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to set aside the impugned 18.05.2022 in GSTIN: 3BOTPP7894DIZ8/2018-19 summarized under FORM GST DRC-07 dated 18.05.2022 under reference No.ZD3305220080038 as to set aside by calling the entire records pursuant to the order under reference No.220202220596064 dated 18.05.2022 for the period April 2018 to March 2019 summarised under FORM GST DRC-07 dated 27.04.2022 under reference No.ZD3305220080038 as to set aside by calling the entire records on the file of respondent.

PRAYER in W.P.(MD)No.19972 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records on the file of the Respondent herein in GST No. 33APPPA9656J1ZH/2018-19 dated 10.04.2024 and quash the same.

PRAYER in W.P.(MD)No.20653 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the impugned order-in-appeal No.MDU-CGST-ADC-APP-66/2024 dated 03.07.2024 passed in A.No.203/2024-GST-ADC-MDU and quash the same.

PRAYER in W.P.(MD)No.21039 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records on the file of the respondent in GSTIN: 33ABMFS0175M1ZU/2019-20 dated 07.07.2023 for the assessment year 2019-20 passed by the respondent under Section 73 of TNGST Act 2017 and consequential notice of attachment dated 02.08.2024 issued in Form GST DRC-16 issued under Section 79 of the TNGST Act 2017 and to quash the same as cryptic, barred by limitation, non-speaking, illegal, arbitrary and wholly without jurisdiction and direct the respondent to pass assessment order afresh after affording opportunity of personal hearing to the petitioner.

PRAYER in W.P.(MD)No.21306 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records on the file of 1st respondent in statutory appeal order vide AP/GST/T/414/2023 dated 30.01.2024 and assessment order passed by the 2nd respondent vide GSTIN: 33BDPPS1409G1ZJ/2017-18 dated 04.10.2023 and quash the same as illegal as devoid of merits.

PRAYER in W.P.(MD)No.21934 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the impugned assessment order on the file of respondent vide GSTIN:33ALSPM9865C1ZM/2017-18 dated 13.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

PRAYER in W.P.(MD)No.23476 of 2024: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records on the files of the respondent herein in GST No. 33BNXPA5484R1Z2/2019-20 dated 31.08.2024 and quash the same.

PRAYER in W.P.(MD)No.24387 of 2022: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the impugned proceedings of the respondent in DIN:20220659XN0200121667 dated 30.06.2022 and quash the same as illegal and devoid of merits.

For Petitioners in W.P.(MD)Nos.24387 of 2022, 5198, 21934, 21306 of 2024	: Mr.Raja Karthikeyan
W.P.(MD)Nos.6655, 7610, 14543, 7301 of 2024	: Mr.N.Sudalaimuthu
W.P.(MD)No.19861 of 2024	: Mr.R.Sriram
W.P.(MD)No.20653 of 2024	: Mr.Hari Radhakrishnan
W.P.(MD)No.19972, 23476 of 2024	: Ms.S.Esai Rani
W.P.(MD)No.21039 of 2024	: Mr.S.Karunakar
W.P.(MD)No.6953 and 6954 of 2024	: Mr.S.Jai Kumar

For Respondents:

W.P.(MD)Nos.5198, 14543 of 2024	: Mr.N.Dilipkumar Senior Standing Counsel
W.P.(MD)No.6655, 7610, 19972, 21306, 21039 of 2024	: Mr.R.Suresh Kumar Additional Govt. Pleader
W.P.(MD)Nos.21934, 19861 6953, 6954, 23476 of 2024	: Mr.J.K.Jayaselan Government Advocate
W.P.(MD)No.20653 of 2024	: Mr.R.Gowrishankar

Senior Standing Counsel

W.P.(MD)No.7301 of 2024 : Mr.R.Suresh Kumar
Government Advocate for R1 and R2

Mr.R.Senthil Kumar
Central Government Standing Counsel for R3

W.P.(MD) No.24387 of 2022 : M/s.S.Ragaventhree
Junior Standing Counsel

COMMON ORDER

The common question that arises in this batch of writ petitions is as to whether a demand for reversal of input tax credit could be sustained only on account of mismatch between Form GSTR 2A and Form GSTR-3B of a taxpayer. It is pertinent to note here that the petitioners have neither questioned nor addressed any arguments on the validity of Section 16(2)(c) or Section 16(2)(aa) (for the period post 01.01.2022), or the relevant Rules pertaining to available of input tax credit in these writ petitions. Consequently, the scope of judicial review that is available to this Court while examining the aforesaid question is limited. At the outset it may be relevant to state that inasmuch as the provisions of the CGST and SGST Act are identical the issue raised in this batch of writ petitions are dealt with considering the provisions under the CGST Act and the same would govern orders made invoking the SGST Act.

2. For the purpose of disposing of the present batch of writ petitions, the facts in W.P(MD)No.5198 of 2024, shall be dealt with:

a) Petitioner is engaged in manufacture of Lead and Alloys falling under HSN-78011000. During audit, for the period, July 2017 to March 2018, two defects were noticed, which *inter alia* included mismatch between FORM GSTR 2A and FORM GSTR 3B to the tune of Rs.8,09,334/-.

b) In view of the above mismatch/discrepancy between GSTR 2A and GSTR 3B, a show cause notice dated 17.02.2021, was issued by the revenue/department proposing to reverse input tax credit to the extent of mismatch between GSTR 2A and GSTR 3B.

c) After following procedure contemplated under the GST Act, the order of adjudication in OIO No.01/2022 dated 17.06.2022 was passed, confirming the proposal to reverse the input tax credit, in view of mismatch between GSTR 2A and GSTR 3B. Aggrieved by the above order reversing the input tax credit in view of mismatch between GSTR 2A and GSTR 3B, an appeal was preferred before the Additional Commissioner (Appeals), Coimbatore. Before the appellate authority, petitioner furnished Chartered Accountant Certificates as provided in Circular No.183/15/2022-GST dated 27.12.2022 for Rs. 1,64,722/- of total mismatch between GSTR 2A and GSTR 3B of Rs. 8,09,334/-. Pursuant thereto, appellate authority, modified the order and allowed petitioner's availment of input tax credit to the extent of Rs.1,64,722/- with regard to which Chartered Accountant Certificates were furnished by the petitioner as contemplated in the above circulars.

d) The order in original was confirmed in respect of the remaining input tax credit to the extent of Rs.6,44,612/-. It is against this order of appellate authority, the present writ petition is filed.

3. Though a further appeal is available before the Tribunal, however the Tribunal is not functional, the present writ petition, challenging the order of the appellate authority is entertained.

4. Against the above background, the common question that arises for consideration in this batch of Writ petitions is as to the legality/correctness of orders of assessments/adjudications disallowing/reversing input tax credit on the ground of mismatch between GSTR 2A and GSTR 3B.

5. Case of the Petitioner:

i) Section 16(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"), states that a registered person will 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.

ii) Section 16(2) of the Act contains a ‘non-obstante clause’ and provides that a recipient of supply would be entitled to ITC only on satisfaction of the conditions enumerated in the said sub-section.

iii) Section 16(2)(c) read with the first part of Section 16(2) of the Act would provide that notwithstanding anything contained in Section 16, no registered person shall be entitled to credit of any input tax in respect of any supply of goods or services unless, tax charged in respect of such supply has been actually paid to Government, either in cash or through utilization of input tax credit admissible in respect of the said supply. However, this clause is made subject to Section 41 of the CGST/SGST Act. Clause (c) to subsection (2) to Section 16 of the CGST/SGST Act is the only clause which is made subject to Section 41 of CGST/SGST Act.

iv) Section 41 of the Act grants provisional credit (as it was prior to 01.10.2022) to recipients of supplies based on self-assessment. This provisional credit can be used by the recipient to discharge output tax liability. It is well settled that the expression 'subject to', conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. [*Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447.]*

v) That Section 16(2)(c) yields to Section 41 of the Act to enable recipients to avail provisional credit even though the supplier is yet to pay tax to the Government in respect of the supply made. The reason for this legislative scheme being that law envisages the condition under Section 16(2)(c) would be fulfilled only through a specific system-based matching mechanism prescribed under Section 42 of the Act read with Rules 69 to 72 of the Central Goods and Service Tax Rules (hereinafter referred to as "CGST Rules").

vi) That the GST law originally envisaged that the mandate laid down in Section 16(2)(c) of the Act would be fulfilled only through matching mechanism provided for in Section 42 read with Rules 69 to 72 of the CGST Rules. Section 42 of the Act was omitted with effect from 1st October, 2022 vide Finance Act, 2022.

vii) That the parent act itself envisaged a system-based matching mechanism of granting and denying ITC when a supplier fails to remit tax to the Government. The legislature in its wisdom provided only for the aforesaid mechanism to ensure seamless flow of ITC. In this regard, reference was made to Report of the Comptroller and Auditor General of India for the year ended March, 2018.

viii) Till date, system-based matching mechanism envisaged originally when GST was introduced has not been implemented and in fact, Government has decided to no longer pursue this effort. Appropriate amendments have also been made in this regard.

ix) Taxpayers are filing summary return in Form GSTR-3B through which tax is paid and ITC is availed. There is no methodology/mechanism available to verify whether the supplier has in fact paid tax in respect of the supplies made.

x) It is for this reason, the GST Council in their discussions also acknowledged that the intention is not to restrict the flow of ITC due to non-payment of the GST on the output supplies made by the supplier. In fact, it was also recognised that recoveries could be made from the suppliers first and from the buyers only in exceptional circumstances such as missing suppliers/closure of business etc. Reliance was placed on Minutes of the 27th GST Council Meeting held on 04th May, 2018.

xi) In the absence of above matching mechanism, Section 16(2)(c) continued to yield to Section 41 of the Act. The credit provisionally granted to the recipients remained intact in their hands. Such credit could be utilised by the recipients for payment of output tax liabilities as provided for in Section 41(2) of the Act. The law does not contemplate a mechanism through which a recipient can finalise such provisional credit on his own.

xii) To fulfil the requirement of Section 16(2)(c) of the Act, the Revenue was vested with the onus to effectuate the system-based mechanism of matching. For determining whether the requirement of Section 16(2)(c) of the Act has been fulfilled, GST law does not provide for or recognise any other alternate route (i.e., other than the system-based matching mechanism).

xiii) Accordingly,it is submitted that the provisional credits availed by recipients in the absence of the system-based matching mechanism are duly eligible in terms of Section 16 read with Section 41 of the Act.

6. <u>Case of respondent:</u>

a) GST is a destination-based tax. Input Tax Credit is a basic/ core concept of GST.

b) ITC is a concession and cannot be claimed as a matter of right. A registered person is eligible to ITC subject to complying/fulfilling conditions and restrictions imposed under the Act.

c) Section 16(1) of the Act deals with entitlement to take input tax credit and provides as under:

i) Every registered person shall be entitled to take credit of input tax charged on any goods or services or both to him.

ii) Taxable person should use or intend to use the said goods or services or both in the course of furtherance of his business.

iii) Credit must be reflected in the statement of inward supplies of such taxable person in Form GSTR-2A.

iv) ITC is subject to such conditions and restrictions, that may be prescribed.

v) ITC can be availed only in the manner specified in Section 49 of the Act.

d) Section 16(2) of the Act deals with the conditions for taking ITC.

i) Taxable person should have received the goods or services or both.

ii) Taxable person should have furnished the return under Section 39 of the Act.

iii) The tax charged in respect of such supply should have been actually paid to the government either in cash or through utilization of admissible input tax credit subject to the provisions of Section 41 of the Act.

iv) Taxable person should have a tax invoice or debit note issued by a supplier registered under the Act or such other tax-paying documents that are prescribed.

e) To mitigate the difficulty faced by the petitioner/assessee on their Input Tax Claim, which was being rejected in view of mismatch between GSTR 2A and GSTR 3B, two circulars were issued viz., No.183/15/2022 GST dated 27.12.2022 and Circular No.193/5/2023 GST dated 17.07.2023.

7. Two questions arise for consideration viz.,

a) Whether the non-operationalization of returns, in Form GSTR 2, GSTR 1A and GSTR 3 has any effect of the validity of the proceedings denying the petitioner's claim of Input Tax Credit on the ground of mismatch between GSTR 3B and GSTR 2A ?

b) What is the mechanism for resolving issues relating to denial of Input Tax Credit in case of discrepancy between GSTR 2A and GSTR 3B ?

8. Both the issues need not detain this Court for long, as the first question I would think stands answered/resolved by the Supreme Court in the case of ***Union of India v. Bharti Airtel Ltd. reported in (2022) 4 SCC 328***. The second issue also appears to have been addressed by CBIC by issuance of Circular No. 183/15/2022-GST and Circular No. 193/05/2023-GST.

9. Before proceeding further it would be necessary to examine Section 16 of the Act in particular sub-section (2) to Section 16 of the Act which reads as under:

> *"(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 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 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;

(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 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 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 10[to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon."*

10. From a reading of the above provision, it would be clear that the following conditions must be complied with by a claimant/recipient to be entitled to avail Input Tax Credit viz., (prior to 01.01.2022)

a) The registered person ought to be in possession of a tax invoice or debit note from a supplier who is registered under the GST Act to claim ITC or or such other tax paying documents

b) Registered person must have received the goods and/or services in question.

c) The recipient must have furnished his returns under Section 39 of the Act.

11. Section 16 of CGST Act was amended by insertion of Clause (aa) to Section 16(2) of the Act and the relevant portion reads as under:-

> *".......Amendment inserted by Finance Act 2021 w.e.f. 1-1-2022 vide Noti.No.39/2021-Central Tax, dt.21-12-2021.*
>
> *(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 specified under section 37;*
>
> *........Amendment inserted by Finance Act 2022 (6 of 2022), w.e.f. 1-10-2022 vide SO 4569 (E), dt.28-9-2022.*
>
> *(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;*
>
> *..........."*

12.The present batch of Writ Petitions are concerned with assessment years prior to 2021.

13.The thrust of the Petitioner's argument is that the Act had originally contemplated that in a Business to Business (B2B) transaction, a supplier (of goods/services) and a recipient (of goods/services) would interact with each other through a common electronic portal. The statutory framework ought to provide for payment of tax and furnishing of returns including availing/taking and utilisation of credit. Sections 37, 38 read with Section 42 of the Act and Rules 59 and 60 of the CGST Rules, as it originally stood, set out features to be provided in the common portal. It provided/contemplated auto-population of records of supplier and recipient and to facilitate interaction of GSTN through Forms GSTR-1, 1A, 2, 2A and 3 and generation and filing of periodical returns. It contemplated an automatic matching, reversal and claim of ITC.

14. Return in Form GSTR-3B was introduced as a stopgap arrangement. Form GSTR-3B is a summary return and does not contain invoice-wise details. Recipient had no access to the vendor's returns and no facility to verify the correctness of the ITC taken based on whether the supplier had actually paid the taxes to the Government.

15. Assessees were given to understand right from 2015 that the system of return filing will be automated under GST. The entire industry and trade accordingly contemplated system changes based on these declarations i.e. return filing and taking/utilizing credit to be on the basis of auto-populated returns. It may be relevant to note that a few days before implementation of GST, even though Sections 37, 38, 39, 42 and 43 were notified and were brought into force, but in view of technical difficulties faced in making GSTR 2 and GSTR 3 operational, returns in Form GSTR 3B was introduced in view of Form GSTR 3 and was intended to be a stopgap/temporary arrangement vide Notification No.10 of 2017-Central Tax dated 28.06.2017. In October 2019, by amending Rule 61(5) retrospectively Form GSTR-3B was regularized as specified return under Section 39 of the Act. The Automated system of returns and reconciliation contemplated under Sections 37 to 39 was formally done away with.

16. Against this background, question that arises for consideration is whether non operability of relevant statutory form in Form GSTR 2 and 3 would have any bearing on the claim of ITC under the GST Act. The above question need not detain us for long inasmuch as the Apex Court in the case of

Union of India vs. Bharti Airtel Ltd., (2022) 4 SCC 328, had rejected similar contentions and held as under:

> *"46. Reverting to the analysis of the issues and contentions done by the High Court, it is primarily focused on the grievance of the writ petitioner that due to non-operability of Form GSTR-2A at the relevant time (July to September 2017), it had been denied of access to the information about its electronic credit ledger account and consequently, availing of ITC for the relevant period and instead to discharge the OTL by paying cash to its vendors. Thus, it has resulted in payment of double tax and unfair advantage to the tax authorities because of their failure to operationalise the statutory forms enabling auto-populating statement of inward supplies of the recipient and outward supplies including facility of matching and correcting the discrepancies electronically.*
>
> *47. The High Court, however, did not enquire into the cardinal question as to whether the writ petitioner was required to be fully or wholly dependent on the auto generated information in the electronic common platform for discharging its obligation to pay OTL for the relevant period between July and September 2017. The answer is — an emphatic No. In that, the writ petitioner being a registered person, was under a legal obligation to maintain books of accounts and records as per the provisions of the 2017 Act and Chapter VII of the 2017 Rules regarding the transactions in respect of which the OTL would occur. Even in the past (till recently up to the 2017 Act came into force), during the pre-GST regime, the writ petitioner (being registered person/assessee) had been maintaining such books of accounts and records and submitting returns on its own. No such auto-populated electronic data was in vogue. It is the same pattern which had to be followed by the registered person in the post-GST regime.*
>
> *48. As per the scheme of the 2017 Act, it is noticed that registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of OTL including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of accounts required to be statutorily preserved and updated from time to time. That he could do even without the common electronic portal as was being done in the past till recently pre-GST regime. As regards liability to pay OTL, that is on the basis of the*

transactions effected during the relevant period giving rise to taxable event. The supply of goods and services becomes taxable in respect of which the registered person is obliged to maintain agreement, invoices/challans and books of accounts, which can be maintained manually/electronically. The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/electronically. These are not within the control of the tax authorities. This was the arrangement even in the pre-GST regime whilst discharging the obligation under the concerned legislation(s). The position is no different in the post-GST regime, both in the matter of doing self-assessment and regarding dealing with eligibility to ITC and OTL. Indeed, that self-assessment and declarations would be any way subject to verification by the tax authorities. The role of tax authorities would come at the time of verification of the declarations and returns submitted/filed by the registered person.

49. Section 16 of the 2017 Act deals with eligibility of the registered person 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. The input tax credit is additionally recorded in the electronic credit ledger of such person under the Act. The "electronic credit ledger" is defined in Section 2(46) and is referred to in Section 49(2) of the 2017 Act, which provides for the manner in which ITC may be availed. Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

50. As aforesaid, every assessee is under obligation to self-assess the eligible ITC under Sections 16(1) and 16(2) and "credit the same in the electronic credit ledger" defined in Section 2(46) read with Section 49(2) of the 2017 Act. Only thereafter, Section 59 steps in, whereunder the registered person is obliged to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under Section 39 of the Act. To put it differently, for submitting return under Section 59, it is the registered person who has to undertake necessary measures including of maintaining *books of accounts for the relevant period either manually or electronically. On the basis of such primary material, self-assessment can be and ought to be done by the assessee about the eligibility and availing of ITC and of OTL, which is reflected in the periodical return to be filed under Section 59 of the Act.*

51. Section 59 does make reference to Section 39, which deals with furnishing of returns, but the fact remains that for furnishing of returns, preparatory work has to be done by the assessee himself and is not fully or wholly dependent on the common electronic portal for that purpose. Just couple of weeks before the relevant period between July and September 2017, the writ petitioner/Respondent 1 had been doing that exercise which it was expected to continue even under the post-GST scheme. The factum of non-operability of Form GSTR-2A, therefore, is flimsy plea taken by the writ petitioner/Respondent 1. Indeed, if the stated form was operational, the same would have come handy to the writ petitioner for doing self-assessment regarding eligibility of ITC and availing thereof. But it is a feeble excuse given by the writ petitioner/Respondent 1 to assail the condition specified in the impugned Circular dated 29-12-2017 regarding the rectification of the return submitted manually in Form GSTR-3B for the relevant period (July to September 2017).

.....

54. The entire edifice of the grievance of the writ petitioner (Respondent 1) was founded on non-operability of Form GSTR-2A during the relevant period, which plea having been rejected as untenable and flimsy, it must follow that the writ petitioner/Respondent 1 with full knowledge and information derived from its books of accounts and records, had done self-assessment and assessed the OTL for the relevant period and chose to discharge the same by paying cash. Having so opted, it is not open to the respondent to now resile from the legal option already exercised. It is for that reason, the respondent has advisedly propounded a theory that in absence of (electronic-auto populated record) mechanism made available as per Sections 37 and 38, return filed in Form GSTR-3B is not ascribable to Section 39(9) of the 2017 Act read with Rule 61(5) of the 2017 Rules. This is yet another untenable plea taken by Respondent 1. For, the appellant having realised that the mechanism specified in Sections 37 and 38 of the 2017 Act cannot be *put in place due to non-operability of the forms governing such mechanism, had to amend the rules to make a stopgap arrangement until the entire mechanism became operational. The appellant not only amended the statutory rule but also provided for filing of return manually in Form GSTR-3B electronically through the common portal with effect from July 2017. This is manifest from the circulars/notifications issued from time to time including the timeline for submitting the returns.*

55. It is futile to urge that Section 39(9) has no application to the fact situation of the present case. In that, allowing filing of return in Form-GSTR-3B albeit a stopgap arrangement, is ascribable to Section 39 of the 2017 Act read with Rule 61 of the 2017 Rules. Indeed, it is not comparable to the mechanism specified for electronically generated Form GSTR-3 referable to Rule 61. Nevertheless, Form GSTR-3B is prescribed as a "return" to be furnished by the registered person and by the subsequent amendment of Rule 61(5) brought into force with effect from 1-1-2017, it has been clarified that such person need not furnish return in Form GSTR-3 later on. Notably, the validity of that amendment including that of Notification dated 9-10-2019 bearing No. 49/2019, is not put in issue before us.

56. No doubt, in the initial stages, it was notified that Form GSTR-3B will be in lieu of Form GSTR-3 but that was soon corrected by deletion of that expression. At the same time, as the mechanism for furnishing return in terms of Sections 37 and 38 was not operationalised during the relevant period (July to September 2017) and became operational only later, the efficacy of Form GSTR-3B being a stopgap arrangement for furnishing of return, as was required under Section 39 read with Rule 61, would not stand whittled down in any manner. It would still be considered as a return for all purposes though filled manually electronically.

.....

*66***.** *We need not multiply the authorities referred to in the judgments concerned, and cited before us, as in our opinion, these decisions have not dealt with the cardinal aspect of statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are primary documents and source material on the basis of which self-assessment is done by the registered person* *including about his eligibility and entitlement to get ITC and of OTL. Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment. Non-performance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigour to the returns filed by the registered person in Form GSTR-3B.*

67. Significantly, the registered person is not denied of the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of denial of availment of ITC as such. If at all, it is only a postponement of availment of ITC. The ITC amount remains intact in the electronic credit ledger, which can be availed in the subsequent returns including the next financial year. It is a different matter that despite the availability of funds in the electronic credit ledger, the registered person opts to discharge OTL by paying cash. That is a matter of option exercised by the registered person on which the tax authorities have no control, whatsoever, nor they have any role to play in that regard. Further, there is no express provision permitting swapping of entries effected in the electronic cash ledger vis-à-vis the electronic credit ledger or vice versa.
..........”

17. It may also be relevant to refer to the Division Bench judgment of this Court dated 09.05.2025 in W.P.No.5978 and 5983 of 2020, wherein while considering the restrictions under Section 36(4) of the GST Rules it was held as under:

“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."

18. In the light of the above judgment of the Supreme Court and the Division Bench of this Court, I find no merit in the submission of the learned counsel for petitioner.

19. Now coming to the second issue

"What is the mechanism for resolving issues relating to denial of Input Tax Credit in view of discrepancy between GSTR 2A and GSTR 3B"

19.1. This Court finds that pursuant to representation of the trade as well as tax authorities seeking clarification regarding the manner of dealing with the discrepancies between Form GSTR 2A and 3B Circular 183/15/2022-GST came to to be issued to ensure uniformity in the implementation of provisions of law across field formation and Board in exercise of its power conferred under Section 168 (1) of the Act clarified as under:

CircularNo.183/15/2022-GST

F.No.CBIC-20001/2/2022-GST
Government of India Ministry of Finance Department of Revenue
Central Board of Indirect Taxes and Customs GST Policy Wing

.....

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section168(1) of the CGST Act, hereby clarifies as follows:

S.No.	***Scenario***	***Clarification***
a.	Where the supplier has failed to file FORM GSTR-1for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

S.No.	Scenario	Clarification
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

20. While the above circular provided for the manner of dealing with discrepancies between GSTR-2B and GSTR-3A representations were made seeking clarification regarding the manner of dealing with such discrepancies during the period 01.04.2019 to 31.12.2021. This was followed by Circular No. 193/05/2023-GST, wherein the following instructions were issued:

"............

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27 th December, 2022 shall be applicable, in toto, for the period from 01.04.2019 to 08.10.2019.

(ii) In respect of period from 09.10.2019 to 31.12.2019, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27 th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. This is clarified through an illustration below:

Illustration:

*Consider a case where the total amount of ITC available as per FORM GSTR-2A of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in FORM GSTR-3B by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs 3,00,000*1.2 = Rs.3,60,000.*

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to *production of the requisite certificates as per Circular No. 183/15/2022-GST dated 27.12.2022.*

(iii) Similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliersin their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27 th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

5. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No.27/2021-CT dated 01.06.2021 to *provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.*

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending."

21. A reading of the above circulars would show that whenever there is a discrepancy in the Input Tax Credit claim between GSTR-3B and GSTR-2A the same ought to be resolved in accordance with the method and manner provided in Circular no. 183/15/2022-GST and 193/05/2023-GST.

22. With the insertion of clause (aa), (ba) and amendment to clause (c) to subsection (2) to Section 16 a taxable person would have no right to claim Input Tax Credit until and unless it complies with clause (aa) to subsection (2) to Section 16.

23. However, an examination of the Circulars 183 & 193 also reveal that there are lapses on the part of the Respondent authorities to adhere to the

procedure prescribed by the Board in exercise of the powers conferred under Section 168(1) of the Act.

(a) Clause 4.1.1 of the Circular No.183 referred supra provides that in case where difference between the ITC claimed in Form GSTR-3B and available in Form GSTR-2A of the registered person in respect of a supplier for the said financial year exceeds Rs.5 Lakhs, the proper officer shall ask the registered person to produce a certificate from the Chartered Accountant of the Supplier as prescribed therein.

(b) Clause 4.1.2 of the Circular provides that where the difference between the ITC claimed in Form GSTR-3B and that available in Form GSTR-2A of the registered person in respect of a supplier for the said financial year is upto 5 lakhs, the proper office shall ask the claimant to produce a certificate from the concerned supplier as prescribed therein.

(c) Therefore, the Circular places the onus squarely on the proper officer in the process of verification of Section 16(2)(C) to first intimate the taxpayer of the discrepancy between Form GSTR-2A and Form GSTR-3B and then, more importantly, to ask the registered person to produce certificates under the

Circulars either from the CA or from the supplier depending on the prescribed monetary criteria.

(d) It is the proper officer who has been obliged to intimate the assessee of the process of resolution through production of certificates and to aid the assessee in such resolution.

(e) The proper officer must expressly intimate the assessee and the mandate imposed on the proper officer is clear by use of the term “shall ask”.

(f) Since in the impugned assessment proceedings there has not been any separate and express intimation to the petitioners highlighting the mechanism of reconciliation through production of certificates and the form/stipulations which such certificates must satisfy, it amounts to violation of the procedures as prescribed by the Board and binding on the proper officers. Consequently, the impugned orders are liable to be set aside on the ground of procedural arbitrariness.

24. The present Writ Petitions are disposed of setting aside the impugned orders of assessment/adjudication and granting liberty to the respondent

authority to reconsider the claim of input tax credit by the petitioners in accordance with Circular no. 183/15/2022-GST and 193/05/2023-GST and the amendments made to Section 16 of the Act after affording the petitioners a reasonable opportunity of hearing within a period of 4 months from the date of uploading of web copy without waiting for the receipt of certified copy. No costs. Consequently, connected miscellaneous petitions are closed.

17.06.2025

Index : Yes/No
Neutral Citation : Yes/No
spp/mka

To:

1.The Commissioner of GST & Central Excise (Appeals),
Coimbatore @ Circuit Office, Madurai,
4, Lal Bahadur Shastri Marg,
C R Buildings, Madurai-2.

2.The Superintendent of GST and Central Excise,
Vilampatti Range,
CR Building, 1/749, Pallampatti Road,
Thiruthangal, Sivakasi.

3. The Additional Commissioner
of GST (Appeal), Coimbatore,
Circuit Office at Trichirappalli,
No.1, Williams Road, Cantonment,
Trichirappalli.

4.The Superintendent,
Central Goods and Services Tax and Central Excise,
Trichy-II Division-Musiri Range,
No.1 Williams Road, Cantonment, Trichy 620 001.

5. Deputy State Tax Officer-1,
Office of the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai.

6. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

7. The State Tax Officer,
Ramanathapuram Assessment Circle,
K.T.M. Complex, Salai Street,
Ramanathapuram 623 501.

8. The State Tax Officer (FAC),
Nagercoil-1, Assessment Circle,
Commercial Taxes Buildings,
Nagercoil.

9. The State of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai 600 009.

10. Union of India,
Secretary to the Government of India,
Ministry of Finance (MOF),
Raj Path Marg, 'E' Block,
Central Secretariat, New Delhi 110011.

11.The State Tax Officer,
Thuckalay-2, Assessment Circle,
Nagercoil.

12. The State Tax Officer-I,
Commercial Tax Officer,
Thanjavur-I, Assessment Circle,
Thanjavur.

13. The Deputy State Tax Officer-2,
Sengottai Assessment Circle,
Sengottai, Tamil Nadu.

14. The Additional Commissioner (Appeals),
GST & Central Excise Commissionerate,
No.4, Lal Bahadur Shastri Road,
Revenue Building, B.B.Kulam,
Madurai-625 002.

15. The Assistant Commissioner of CGST
& Central Excise,
Office of the Deputy Commissioner of CGST

& Central Excise, Tuticorin Division,
C-50, SIPCOT Industrial Complex,
Tuticorin-628 002.

16.The Deputy State Tax Officer,
Office of the State Tax Officer,
Nilakkottai Assessment Circle,
Commercial Taxes Building,
Nilakkottai.

17. The Deputy Commissioner (ST),
GST Appeal, Commercial Tax Building,
K.K.Nagar, Madurai.

18. The State Tax Officer,
Tuticorin-II Assessment Circle,
Thoothukudi.

19. The Assistant Commissioner (ST),
Theni-I, Theni.

20. The Deputy State Tax Officer-1,
(also known as Deputy Commercial Tax Officer),
Office of the Assistant Commissioner (ST),
Tenkasi Near Yaanaipalam,
Tenkasi 627 811.

21. The Assistant Commissioner,
Central Goods and Service Tax and Central Excise,
Trichy-II Division,
No.1, Williams Road,
Cantonment, Trichy-620 001.

MOHAMMED SHAFFIQ, J.

spp/mka

W.P.(MD).No.14543 of 2024 etc., batch

17.06.2025