BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD) No.18980 of 2025 and
W.M.P(MD) No.14539 of 2025

M/s.Moosa Traders,
represented by its Proprietor
Ismail Meeran,
GSTIN 33ABKPI1845C1Z3,
28, West Car Street,
Tirunelveli. ... Petitioner

Vs.

The State Tax Officer,
Tirunelveli Town Assessment Circle,
Reserve Line,
Palayamkottai, Tirunelveli. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent in GSTIN 33ABKPI1845C1Z3 / 2018-2019 in DRC 07 Ref.No.ZD330121001858U dated 27.01.2021 and quash the same as illegal, arbitrary, undue enrichment, without jurisdiction and in view of Amended/inserted Section 16(5) of the TNGST Act 2017 as amended by Finance (No.2) Act 2024 further direct the respondent to pass an assessment order afresh after affording opportunity of being heard and issue the refund of eligible amount of collected from the petitioner.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

2. The petitioner is before this Court against the impugned order, dated 27.01.2021 in the light of the subsequent amendment to the provision of the respective GST Act, 2017. In view of the insertion of Section 16(5) of the respective GST Act with effect from 16.08.2024 with retrospective effect from 2017-18 vide order in Finance (No.2) Bill, 2024. This Court has also intervened under similar circumstances ***in W.P(MD) No.13205 of 2022 in the case of M/s.SJB Automobiles Private Limited Vs.The Assistant Commissioner of GST & Central Excise, Coimbatore,*** which is reproduced below:

> 2. The issue arising out of belated availing of input tax under Section 16 of CGST Act, 2017 has been addressed by the Parliament by inserting Section 16 (5) of the Act. In fact, this Court has taken note of the same and passed an order on

29.07.2024 in ***M/s.Sagar Brush Industries and others Vs. The State Tax Officer's Case [WP (MD).Nos.20773 of 2024 etc., batch]*** The operative portion of the order reads as under:-

"4. Already today, few orders have been passed, wherein under similar circumstances, the respective Assessment Orders as also the order passed by the Appellate Authority under Section 107 of the respective GST Enactments have been set aside and the cases were remitted back in the light of Clauses 114 and 146 of the proposals in the Finance (No.2) Bill, 2024, presented on 23.07.2024. Wherever there is a delay in availing input tax credit for the Assessment Years 2017-2018 upto 2020-2021, the Parliament has extended an olive branch to taxpayers in terms of the proposals contained in Clause 114 of the Finance (No.2) Bill, 2024. This Clause seeks to amend Section 16(4) of the CGST Act by adding sub-sections 5 and 6. Clause 114 seeking to amend Section 16 of the CGST Act, 2017, reads as under:-

"114. 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 subsection (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 upto 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 upto 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. Now 16(5) is a reality and has also notified by the Central Government under Notification No.22/2024-

CENTRAL TAX dated 08.10.2024.

> 4. In view of the above, the impugned order is set aside and the matter is remitted back to the respondent to pass a fresh order on merits and in accordance with the statutory amendment of Section 16 of CGST Act, this writ petition stands allowed.

3. In view of the above, this Court is inclined to set aside the impugned order, dated 27.01.2021 and remits the case back to the respondent to pass a fresh order taking note of the above amendment to the respective GST enactment Act within a period of three months from the date of receipt of copy of this order.

4. With the above direction, this Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

14.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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C.SARAVANAN, J.

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To

The State Tax Officer,
Tirunelveli Town Assessment Circle,
Reserve Line,
Palayamkottai, Tirunelveli.

W.P(MD) No.18980 of 2025

14.07.2025