



W.P.(MD)Nos.21165 & 21166 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

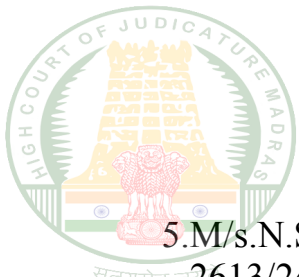
W.P.(MD)Nos.21165 & 21166 of 2022

M/s.Baby Marine (Eastern) Exports,
Rep., by its Partner,
Nancy Babu

... Petitioner
in both Writ Petitions

-Vs-

- 1.Union of India,
Rep., by its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
- 2.Central Board of Indirect Taxes and Customs,
Department of Revenue,
Ministry of Finance, New Delhi-110 001.
- 3.State of Tamil Nadu,
Rep., by Secretary Taxes,
Secretariat, Chennai-600 009.
- 4.The Deputy Commissioner of GST and Central Excise,
Madurai-II Division,
No.5, V.P.Rathinaamy Nadar Road,
Bibikulam, Madurai-625 002.



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5.M/s.N.S.Rathinam & Sons P Ltd.,
2613/242, NH 7, Dindigul Karur Highway,
Agaram Village, Dindigul-624 709.

... Respondents
in both Writ Petitions

PRAYER in W.P.(MD)No.21165 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring Section 16(2)(c) r/w Rule 36(4) of Goods and Service Tax Act and Rules, 2017 as illegal and unconstitutional to the extent to which it provides that the recipient is not entitled to take ITC if supplier has not paid collected tax to the Government.

PRAYER in W.P.(MD)No.21166 of 2022: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings in No.IV/10/21/2020-CEX Refund case ID No.NII/2021-CEX Refund, dated 17.02.2021 on the file of the 4th respondent and quash the same as illegal and consequently, the 4th respondent to allow input credit to the petitioner and refund the amount of Rs.31,57,846/- adjusted by the 4th respondent from the eligible refund of the petitioner.

For Petitioner : Ms.T.Archana
For R1 : Mr.V.Malaiyendran
For R2 & R4 : Mr.N.Dilip Kumar
For R3 : Mr.R.Suresh Kumar,
Additional Government Pleader
For R5 : Mr.B.Sekar
(in both Writ Petitions)



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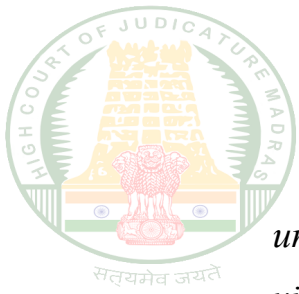
COMMON ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The constitutional validity of the provisions of Section 16(2)(c) and Rule 36(4) of Goods and Service Tax Act and Rules, 2017 is challenged before the Kerala High Court in the case of ***Nahasshukoor Vs. Assistant Commissioner, State GST Department Alappuzha.*** The Division Bench of Kerala High Court considered the issues and dismissed the Writ Appeal and the judgment is reported in ***(2023) 13 Centax 316 (Ker.)***. The relevant portion of the judgment is extracted hereunder:-

“9.The appellants also challenged the constitutional validity of section 16(2)(c) of the CGST Act and rule 36(4) of the CGST Rules. It is contended that those provisions are violative of Article 14 of the Constitution of India since they are discriminatory against the purchasing dealers. It is further contended that those provisions which insist that the purchasing dealer must ensure the compliance of the statutory provisions by the supplying dealer is arbitrary and illegal.

10.It is now well settled that any tax legislation may not be easily interfered with. The court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly



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unconstitutional. Taxing statutes cannot be placed, tested or viewed on the same principles as laws affecting civil rights such as freedom of speech, religion, etc. The test of taxing statutes would be viewed on more stringent tests [State of Himachal Pradesh v. Goel Bus Service, Kullu (2023 Livelaw (SC) 27)]. The vires of section 16(2)(c) of the CGST Act or Rule 36(4) of the CGST Rules is not under challenge on the ground of legislative incompetence. The challenge of the constitutional validity of the provisions on the grounds of violation of Article 14 of the Constitution is vague. Nothing in the impugned provisions indicates that they discriminate between the purchasing and selling dealers. As stated already, the input tax credit is in the nature of a benefit or concession conferred under the statute. The impugned provisions prescribe certain conditions for the purchasing dealers to avail of the benefit. It is up to the purchasing dealer to avail of the said benefit/concession following those conditions. The prescription of the conditions cannot be considered discriminatory to contravene Article 14. So far as the second point urged by the appellants is concerned, it is settled that legislation or provision in a statute cannot be challenged only on the grounds of arbitrariness or unreasonableness. Manifest arbitrariness must be established to strike down a provision in the statute as violative of Article 14 of the Constitution. The test to determine manifest arbitrariness is whether the enactment is drastically unreasonable, capricious, irrational, or without adequate determining principle (See



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Shayara Bano v Union of India [(2017) 9 SCC 11]. Nothing indicates that the impugned provisions satisfy the said test and thus manifestly arbitrary and glaringly unconstitutional. Under these circumstances, the challenge to the constitutional validity of the impugned provisions must fail.”

2.The Division Bench of Madras High Court in the case of ***L & T Geostructure LLP Vs.Union of India*** reported in ***(2025) 30 Centax 453 (Mad.)*** considered the constitutional validity of Rule 36(4) of Goods and Service Tax Rules, 2017 and upheld the same and thereby dismissed the Writ Petition. The relevant paragraphs are extracted hereunder:-

“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). Ipso 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



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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.

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.”



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3. In view of the fact that the Division Bench of the Kerala High Court and the Division Bench of the Madras High Court upheld the provisions of the Act and Rules, no further deliberations are required from the hands of this Court.

4. The learned counsel appearing for the petitioner would submit that entire tax amount has already been paid in respect of W.P.(MD)No.21166 of 2022.

5. May that as it be, consequential relief as such sought for seeking refund of the tax amount cannot be considered by this Court, since adjudication relating to facts are required at the hands of the competent authority. Thus, the petitioner is at liberty to approach the authorities competent, if they are otherwise eligible for any relief under the provisions of the Act and Rules.

6. With the above observation, these Writ Petitions are dismissed. No costs.

(S.M.S., J.) & (A.D.M.C., J.)
06.08.2025

NCC : Yes / No
Index : Yes / No

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AND

DR.A.D.MARIA CLETE, J.

Yuva

To

The Secretary Taxes,
State of Tamil Nadu,
Secretariat, Chennai-600 009.

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