

2024 TAXONATION 1909 (MADRAS)

MADRAS HIGH COURT

W. P. (MD) No. 21863 of 2022 And W. M. P. (MD) Nos. 16025 & 16027 of 2022

Mr. Kannan Mahalingam S/O. Mahalingam, Proprietor IN M/S. Kannan Marketing-Appellant

Versus

The Commissioner of GST and Central Excise, The Assistant Commissioner, Central GST and Central Excise, The Commissioner of GST and Central Excise (Appeals) , Madurai-Respondent

Coram: Hon'ble Mr. Justice C. Saravanan

Date of order: 29/07/2024

Decision-In Favour of Assessee

Held That: The petitioner challenges the Order-in-Appeal concerning delayed Input Tax Credit for the Assessment Year 2018-2019. The court decided to set aside the order and remand the case for reconsideration in light of amendments proposed in the Finance (No.2) Bill, 2024.

Appearance:

Mr. T. Ramesh For the Petitioner

Mr. N. Dilip Kumar Senior Standing Counsel For the Respondent

JUDGMENT

In this Writ Petition, the petitioner has challenged the impugned Order-in-Appeal No.MAD-CGST-JTC-APP-173-21, dated 25.01.2021 passed by the third respondent.

2. The dispute pertains to the Assessment Year 2018-2019. The dispute primarily relates to the delayed availing of Input Tax Credit contrary to [Section 16\(4\)](#) of the respective GST Enactments.

3. The learned counsel for the petitioner would place reliance on the Clause 114 of the Finance (No.2) Bill, 2024, pursuant to the recommendation of the GST

Council in its 53rd Meeting held on 22.06.2024. It is submitted that the intention of the Parliament is to allow the benefit of Input Tax Credit, not to deny it.

4. On the other hand, the learned Senior Standing Counsel for the respondents would refer to the Clause 146 of the Finance (No.2) Bill, 2024. It is submitted that the matter may be remitted back, subject to the amendments proposed to be incorporated into the respective GST enactments.

5. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, I am of the view that this is fit case for interference as the Parliament has itself taken stock of the situation by addressing the issue in Clause 114 of the Finance (No.2) Bill, 2024 with the rider in Clause 146 of the Finance (No.2) Bill, 2024. Clause 114 & 146 of the Finance (No.2) Bill, 2024 read as under:-

Clause 114	Clause 146
<p>114. In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after subsection (4), the following sub-sections shall be inserted, namely:—</p> <p>“(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 upto the thirtieth day of November, 2021.</p> <p>(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 subsection (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,—</p> <p>(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</p> <p>(ii) for the period from the date of</p>	<p>146. No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 114 been in force at all material times.</p>

6. Under these circumstances, the impugned Order-in-Appeal No.MAD-CGST-JTC-APP-173-21, dated 25.01.2021 passed by the third respondent confirming the Order-in-Original No.VNR-GST-0000- AC-000-01-2020, dated 09.11.2020 passed by the second respondent, is set aside and the case is remitted back to the second respondent to pass a fresh order, after taking stock of the amendments into the respective GST Enactments, based on the proposals in Finance (No.2) Bill, 2024.

7. In the result, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.