



W.P.(MD)No.12965 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.(MD)No.12965 of 2022

and

W.M.P.(MD)No.9209 of 2022

M/s.Janapriyaa Super Market,
Represented by its Managing Partner Shahul Hameed,
No.50, Jawahar Street,
Karaikudi,
Sivagangai District,
Tamil Nadu - 630 001.

... Petitioner

Vs.

The Deputy Commissioner of Central Goods
and Services Tax and Central Excise,
Madurai - II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Raod,
Bibikulam, Madurai - 625 002.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for records pertaining to the impugned proceedings of the respondent in DIN: 20220359XO000000E223 dated 14.03.2022 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja Karthikeyan



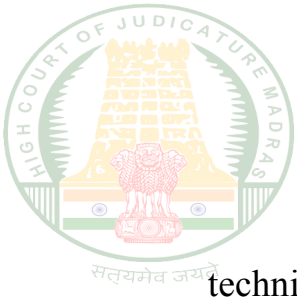
W.P.(MD)No.12965 of 2022

ORDER

WEB COPY

The impugned proceedings passed by the respondent in DIN: 20220359XO000000E223 dated 14.03.2022, is under challenge in the present Writ Petition.

2. The contention of the petitioner is that the petitioner is running Super Market in the name and style of 'M/s.Janapriyaa' registered with the respondent Department and regularly filing the monthly returns under Goods and Service Tax Act (in short 'GST'). Based on the scrutiny and verification of GSTR-3B returns filed for the financial year July '2017 to March '2018, the respondent's Office issued notice dated 14.06.2021. The show cause notice was issued on the ground that the petitioner have wrongly availed the Input Tax Credits (in short 'ITC') to the tune of Rs.24,81,960/- (CGST of Rs.12,27,669/- and TNGST of Rs.12,27,669/- and IGST of Rs.26,622/-) and short payment of TNGST of Rs.4,26,990/- on the supplies, during the assessment period. Thereafter, the petitioner have filed objections on 27.07.2021, rejecting the proposal to reverse the ITC not reflected in GSTR 2A. In the impugned notice, it is stated that due to



W.P.(MD)No.12965 of 2022

WEB COPY

technical reasons, the petitioner's suppliers were not able to upload the invoices under the category of B2B in GSTR 1, but they have paid the tax and uploaded the invoices under B2C category and hence, the tax paid details were not reflected in the GSTR 2A. Because of the failure of the suppliers, the petitioner cannot be asked to reverse the ITC. As far as the petitioner is concerned, genuine transactions with their suppliers and payments were made regularly. The petitioner cannot supervise their suppliers as to whether they have filed their returns or not. The payment of tax by their suppliers is not connected with GSTR1, but with GSTR 3B and DRC 03. Hence, there was a shortfall in the payment of TNGST of Rs.4,26,990/- for the impugned period, which they have reversed the same in Annexure 4 of GSTR 3B.

3. A personal hearing was conducted on 09.03.2022 with the authorized representative of the petitioner, namely, R.Ramesh, Tax consultant. However, his submissions were not properly considered. Further, non-reflecting of the tax payment was due to suppliers not conversant with transaction payment at the initial stage from 2017 to 2018.



W.P.(MD)No.12965 of 2022

WEB COPY

4. At this stage, the learned counsel for the petitioner brought to the notice of this Court that a press release was issued by the Central Board of GST council on 04.05.2018. In the said press release, it is mentioned that 'there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc.'

5. Further, the learned counsel relied on Notification No.40/2021-Central Tax issued by the Central Board of Indirect Taxes and Customs and the relevant portion is extracted hereunder:

"2. In the central Goods and Services Tax Rules, 2017,

(i) In rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely:-



WEB COPY



W.P.(MD)No.12965 of 2022

"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under Section (1) of Section 37 unless:-

*(a) the details of such invoices or debit notice have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and*

*(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60."*

6. Thereafter, the learned counsel relied upon the order passed by this Court in W.P.(MD)Nos.2127 of 2021 etc., batch on 24.02.2021, wherein, this Court referring to the press release dated 04.05.2018, had given positive direction to the petitioner therein and the same benefit is to be given to the petitioner herein.

7. It is seen from the records that a show cause notice was issued to the petitioner and thereafter, the petitioner sent a reply on 27.07.2021 and



W.P.(MD)No.12965 of 2022

WEB COPY

the personal hearing was conducted on 09.03.2022. After considering the objections, a detailed order has been passed by the Adjudicating Authority. Without filing an appeal before the concerned authority, the petitioner has approached this Court by way of this Writ Petition. The Hon'ble Apex Court and this Court, time and again, held that if there is an alternative and efficacious remedy of appeal, the petitioner can very well approach the concerned authority. Hence, the petitioner is at liberty to approach the Appellate Authority by raising the points. The delay in filing appeal if any to be considered favourably.

8. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

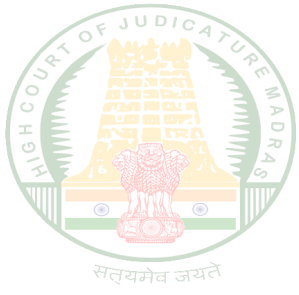
23.06.2022

Index : Yes / No

Speaking Order : Yes / No

vji

Page 6 of 8

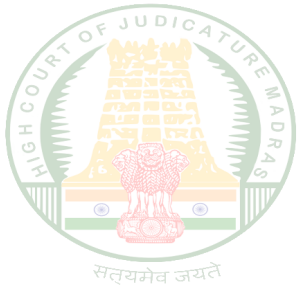


W.P.(MD)No.12965 of 2022

WEB COPY

To

1. The Deputy Commissioner of Central Goods
and Services Tax and Central Excise,
Madurai - II Division,
Central Revenue Buildings,
V.P.Rathinasamy Nadar Raod,
Bibikulam,
Madurai - 625 002.
2. The Managing Partner,
M/s.Janapriyaa Super Market,
No.50, Jawahar Street,
Karaikudi,
Sivagangai District,
Tamil Nadu - 630 001.



WEB COPY



W.P.(MD)No.12965 of 2022

M.NIRMAL KUMAR, J.

vji

**W.P.(MD)No.12965 of 2022
and
W.M.P.(MD)No.9209 of 2022**

23.06.2022