

W.P.No.25081 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

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The Honourable **Mr.Justice Krishnan Ramasamy**

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W.P.No.25081, 26548, 26940, 27796, 29302, 22014, 30957, 7819, 7822, 7824. 19915, and 34518 of 2023, 1827, 2438, 3186, 8868, 9102, 10033, 10041, 10649, 10758, 11001, 12242, 7331, 12502, 13368, 15787, 11440, 17459, 15823, 17166, 17287, 17313, 17560, 17957, 17977, 18148, 18304, 18793, 18954, 18966, 19034, 19855, 19924, 20456, 20467, 20761, 21120, 21248, 21583, 21921, 22422, 22711, 22815, 23057, 23071, 23077, 23093, 23096, 23103, 23145, 23158, 23188, 23630, 23632, 23638, 23661, 23749, 23752, 23798, 23805, 23802, 24006, 24694, 24957, 25003, 25282, 25338, 25701, 25817, 26018, 26121, 26796, 27335, 28189, 28667, 29558, 29924, 29929, 30008, 30077, 30545, of 2024,

and

W.M.P.Nos.24507, 24508, 25952, 25954, 26371, 26373, 27292, 27293, 28924, 34430, 34431, 8059, 30583, 19270, 21383, 30584, 8048, 8049, 8055, 8056, 8058, 19269, 19270 of 2023 and 1891, 1892, 2660, 2657, 3449, 3450, 9873, 9874, 10123, 10124, 11040, 11041, 11042, 11720, 11721, 11730, 11844, 11845, 12083, 12085, 13332, 13333, 8210, 8212, 13649, 13651, 14514, 12549, 12550, 17195, 17196, 17197, 19246, 19248, 24508, 21385, 19269, 17248, 17249, 18950, 18952, 19077, 19078, 19094, 19095, 19349, 19351, 19690, 19716, 19717, 19941, 20093, 20092, 20611, 20615, 20818, 20822, 20829, 20830, 20885, 20884, 21742, 21743, 21793, 21795, 22410, 22411, 22416, 22415, 22704, 22705, 23055, 23057, 23200, 23201, 23552, 23903, 23904, 24421, 24734, 24858, 25149, 25170, 25175, 25208, 25212, 25220, 25279, 25308, 25312, 25345, 25849, 25851, 25858, 25888, 26050, 26055, 25988, 26044, 25985, 26270, 27020, 27296, 27299, 27342, 27621, 27623, 27692, 27693, 28088, 28089, 28099, 28189, 28432, 28534, 29306, 29824, 30730, 30731, 31272, 31273, 32210, 32211, 32293, 32627, 32630, 32625, 32631, 32713 and 32714, 33156, 33158, of 2024



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Sri Ganapathi Pandi Industries,
(GSTIN : 33B2QPK5727D1ZG)

Rep. By its Proprietor,
Karthik Raja, 59-A,
Vaithyanathan Muthali Street,
Tondiarpet, Chennai – 600 081.

...Petitioner

Vs.

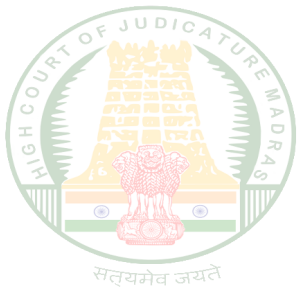
The Assistant Commissioner (State Tax) (FAC)
Tondiarpet Assessment Circle,
Integrated Commercial Taxes Offices Building,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
Chennai - 600 003.

...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari to call for records of the
respondent in GSTIN : 33BW1PK5727D1ZG-2019/2020 dated 06.06.2023
and to quash the same as illegal arbitrary and without jurisdiction.

For Petitioners: Mr.A.Chandrasekaran
for K.Soundara Rajan in W.P.Nos.25081, 27796, 19915
of 2023,
Mr.B.Raveendran in W.P.No.26458 of 2023 and 25817
of 2024
Mr.N.Prasad in W.P.No.26940 of 2023
Mr.Baktha Sironmoni in W.P.No.29302 of 2023,
Mr.R.Swarnavel in W.P.No.34518 of 2023,
Mr.B.Karthik in W.P.No.1827 of 2024,
Mr.R.Ganesh Kanna in W.P.No.2438 of 2024,
Mr.M.Narasimha Bharathi in W.P.No.3186 of 2024,
9102, 7822, 7824 of 2023
Ms.C.Rekha Kumari in W.P.No.8868 of 2024, 18954



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and 25003 of 2024

Mr.S.Ramanan in W.P.No.10033, 10041, 10758 & 17459 of 2024

Mr.V.Karnan in W.P.No.21248 of 2024

Mr.R.Sivaraman in W.P.No.22711 of 2024

Mr.P.Raj Kumar in W.P.No.10649, 21583, 24006 and 26018 of 2024

Mr.Adithya Reddy in W.P.No.11001, 18793, 20456, 20467, 23145, 23632, 24694, 24952, 28189, 29558, 29924, 29929, 30077, 30345 of 2024

Mr.N.Inbarajan in WP 12242 of 2024

Mr.N.Murali in W.P.No.7331, 22014, 30957, 17957, 18966, 19034 and 25282 of 2024

Mr.Joseph Prabakar in W.P.No.12502 of 2024

Mr.P.R.Kumar in W.P.No.13368 of 2024

Mr.K.Nithyavendhhan in W.P.No.15787 of 2024

Mr.Hari Radhakrishnan in W.P.No.11440 of 2024

Mr.R.Kumar in W.P.No.15823 of 2024

Mr.R.Sivaraman in W.P.No.22711 of 2024

Mr.G.Natarajan in W.P.No.17166, 19855 of 2024,

Ms.G.Vardini Karthik in W.P.No.17287 and 19924 of 2024

Mr.A.Chandrasekaran in W.P.No.17313, 17977 & 18304 of 2024

Mr.A.N.R.Jayaprathap in W.P.No.17560 of 2024

Mr.G.Derrick Sam in W.P.No.18148 of 2024

Mr.T.R.Ramesh in W.P.No.20761 of 2024

Mr.S.Ramamurthy in W.P.No.21120 of 2024

Mr.K.Vignesh Kumar in W.P.No.21921 & 28667 of 2024

Mr.S.Karunamoorthy in W.P.No.22422 & 26121 of 2024

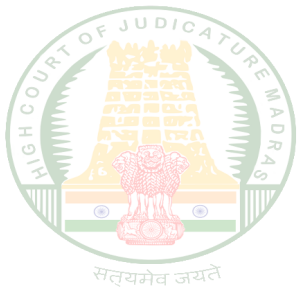
Mr.S.Akila in W.P.No.22815 of 2024

Mr.J.Poojesh in W.P.No.23057, 23071, 23077, 23093, 23103, 23158, 23630, 23638, 23661, 23749, 23752, 23798, 23805 & 23802 of 2024

Mr.R.Vasumithran in W.P.No.23096 of 2024

Mr.K.Thyagarajan in W.P.No.23188 of 2024

Mr.M.A.Mudimannan in W.P.No.25338 of 2024,



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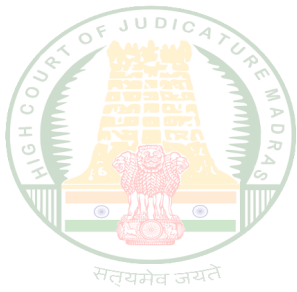


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Mr.P.V.Sudakar in W.P.No.25701 of 2024
Mr.V.Sundareswaran in W.P.No.26796 of 2024
Mr.J.Pooventhera Rajan in W.P.No.27335 of 2024
Mr.K.Vignesh Kumar in W.P.No.28667 of 2024
Mr.T.Ashish in W.P.No.30008 & 30800 of 2024
Mr.Adithya Reddy in W.P.No.30545, 30077 of 2024

For Respondents : Mr. Haja Nazurideen

Additional Advocate General I,
assisted by Mr.G.Nanmaran,
Special Government Pleader and
Mr.Haribabu, Government Advocate (T) for R1 in
W.P.No.19915, 22014 & 30957 of 2023 and W.P.No.
15787 of 2024
for R3 & R4 in W.P.Nos.7819 & 7822 of 2024 and
for R3 in W.P.No.7824 of 2024
Mr.G.Nanmaran, Spl.G.P. In W.P.No.20456, 21921,
23093, 23096 & 26796 of 2024
Ms.Amirta Poonkodi Dinakaran, GA (T) for
respondents in W.P.Nos.25081 of 2023, 3186, 25003,
25701 & 29558 of 2024 and for R2 & R3 in
W.P.No.1827 of 2024
Mrs.K.Vasanthamala, GA (T) for respondents in
W.P.No.26548 of 2023, 17560, 17977, 18954, 20467 &
25338 of 2024 and for R2 in W.P.No.293022 of 2023
and
Mr.K.Mohanamurali, Sr.Panel Counsel for respondents
in W.P.No.26940 & 29302 of 2023 and 18148, 11440
and 17459 of 2024
Mr.V.Prashanth Kiran, GA(T) for respondents in
W.P.Nos.27796 & 34518 of 2023 and 21248, 27796 &
34518 of 2023, 10758, 11001, 12242, 17313, 18304,
18966, 22422, 23057, 23071, 23077, 23093, 23103,
23630, 23638, 23661, 23749, 23798, 23752, 23805,
23802, 24694, 26018, 29924, 29929, 20248, 19034,
30077 of 2024
and for R1 & R2 in W.P.Nos.10033 & 10041 of 2024
and for R4 in W.P.No.10649 of 2024
Mr.T.N.C.Kaushik, AGP (T) for R2 & R3 in



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W.P.No.1827 of 2024
and for Respondent in W.P.No.8868, 24006, 24957,
28667 & 30008 of 2024
and for R1 in W.P.No.9102 of 2024
and for R1 & R2 in W.P.No.23158, 25817 of 2024
Mr.C.Harsha Raj, AGP (T) for R2 in W.P.No.2438 of
2024 and
for Respondent in W.P.No.12502, 17287, 20761, 26121,
28189 of 2024
Mr.A.P.Srinivas, Sr.Standing Counsel for R1 in
W.P.No.2438 of 2024
Mr.B.Ramanakumar, Sr.Standing Counsel for R2 in
W.P.No.9102 of 2024
Mr.T.Ramesh Kutty, Sr.Standing Counsel and
Mr.B.Sivaraman, Jr.Standing counsel for respondent in
W.P.Nos.15823 & 17166 of 2024
Mr.Rajendran Raghavan, Sr.Standing Counsel for
respondents in W.P.No.13368, 19855, 25282 of 2024
Ms.Revathi Manivannan, Sr.Standing Counsel for
respondents in W.P.No.22711, 21583, 22815, 23188 of
2024 and for R1 in W.P.No.27335 of 2024
R5- No appearance in W.P.No.,10649 of 2024,
Mr.Sai Srijan Tayi, SPC for R1 to R3 in W.P.No.10649
of 2024
Mr.S.R.Sundar, Sr.Standing Counsel in W.P.No.7331 of
2024
Mr.Rajanish Pathiyil, SPC for R1 & R2 in
W.P.No.7819, 7824, 7822 of 2023
Mr.Santhanaraman, Sr.Standing Counsel for respondent
in W.P.No.17957 of 2024
Mr.S.Gurumoorthy, SPC for respondents in
W.P.No.23145, 23192 of 2024.

Common Order

This batch of Writ petitions have been filed by the
petitioners/taxpayers, who are registered dealers on the files of the



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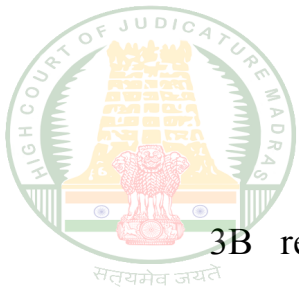
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respondent-Department under the provisions of the Goods and Service Tax Act, 2017 (GST Act)/ Central Goods and Services Tax Act (CGST Act) as the case may be, challenging the orders passed by the respondent-Department, whereby, their claim of ITC was reversed/negatived and the petitioners have been directed to tax/penalty/interest.

2. As the issue involved in all these Writ Petitions is identical in nature and the relief sought thereunder is interconnected, there were heard together and disposed of vide this Common Order.

3. For the purpose of disposal of these cases, Writ Petition No.25081 of 2023 is taken as a lead case, and it would suffice to note the facts stated thereunder.

i) The petitioner is a registered dealer on the files of the respondent under the provisions of the Goods and Service Tax Act, 2017. For the AY 2019-20, the petitioner filed the returns in GSTR-1 in time and filed GSTR-



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3B returns belatedly due to Covid-19, but, the respondent, without considering the reasons for the delay is genuine, passed the impugned order dated 06.06.2023, whereby, ITC claim was reversed and also levied interest/penalty under Section 73 of the Act. Hence, the present Writ Petition.

4. When these matters were taken up for hearing on an earlier occasion, i.e. on 24.09.2024, though learned counsel appearing for the respective writ petitioners argued the matters at length, assailing the impugned orders and the learned Standing Counsel appearing for the Official respondents as a counter-blast to such contentions, argued the matter, after heated arguments, the learned Additional Advocate General submitted that during the 53rd GST Council Meeting held on 22.06.2024, the GST Council recommended for extension of the deadline for availing ITC on any invoice or debit notice under Section 16(4) of the CGST Act and this extension would be applicable to any GSTR-3B returns filed for the Fys 2017-18, 2018-19, 2019-20 and 2020-21 with a new deadline deemed to be as "30.11.2021" and to facilitate this extension, the Council also recommended



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a retrospective amendment to Section 16(4) of CGST Act w.e.f. 01.07.2017.

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4.1 Therefore, the learned Additional Government Pleader requested this Court to adjourn the matters by one month, as the Government of India had been requested to obtain Presidential Assent, and that if the proposed amendment come into force with retrospective effect, the same would give to roost to the issue involved in these Writ Petitions, as, by virtue of the said statutory benefit under the proposed Amendment Act, not only the petitioners but also other taxpayers, who were similarly placed like that of the petitioners herein would be benefited. Since the request made by the learned Additional Government Pleader appears to be that, till Presidential Assent is granted to the Amendment of Section 16 of the CGST Act, no useful purpose would be achieved in adjudicating the Writ Petitions, this Court adjourned the matters to today.

5. Accordingly, when the matters are taken up for hearing today, (i.e. 17.10.2024, the learned counsel appearing for the petitioners made a submission in union that the recommendation made by the GST Council during its 53rd GST Council Meeting held on 22.06.2024 for extension of the



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deadline for filing returns for FYs 2017-18 to 2020-21 with retrospective effect was given approval by the Ministry of Law and Justice, Legislative Department, vide Finance Act (No.2) Act, 2024, dated 16.08.2024, whereby, suitable amendment was made by interpolating sub-sections (5) and (6) after Section 16 (4) of the Central Goods and Services Tax Act and a copy of such presidential assent granted on 16.08.2024, vide Finance Act, (No.2) of 2024, whereby, Section 16 of the CGST Act was amended with retrospective effect from 01.07.2017 by the Ministry of Finance and the Notification issued in regard to the said amendment, and the Circular issued by the Central Board of Indirect Taxes and Customs, clarifying the issues regarding implementation of provisions of sub-sections (5) and (6) in Section 16 of CGST Act, 2017 were produced before this Court for reference and therefore, prayed for quashment of the impugned orders.

6. The learned Additional Advocate General-I and the learned Standing Counsel appearing for the respondent-Department have fairly admitted the legal position and submitted that in the event, ITC pertains to the FYs 2017-18 to 2020-21, in respect of which period, the petitioners have



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availed ITC benefit on or before 30.11.2021, they are entitled to the claim, and therefore, appropriate orders may be orders, insofar as the impugned orders pertains to belated claim of ITC made by the petitioners for the said Financial Years on or before 30.11.2021. However, as far as the impugned orders relating to other issues such as discrepancies in availing the ITC/wrong availment of ITC/excess claim of ITC/Fake ITC claim, as the case may be, he prayed that liberty may be granted to the respondent-Department to proceed against the assessee/petitioners in furtherance of the impugned orders in accordance with law.

7. In reply, Mr. Joseph Prabakar, learned counsel appearing for the petitioner in one of the Writ Petitions would submit that issue involved in all these Writ Petition is identical in nature, as the issue is only with regard to the availment of ITC beyond the period of limitation prescribed under Section 16 (4) of the CGST Act, therefore, the question of discrepancy in availing the ITC or any other issues as pinpointed by the learned Additional Advocate General-I would not arise, therefore, the apprehension expressed on the side of the respondent-Department is baseless and therefore, prayed



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for appropriate orders.

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8. I have given due considerations to the submissions made on either side and perused the materials available on record.

9. The petitioners in all these Writ Petitions are registered dealers on the files of the respondent-Department under the provisions of the Goods and Service Tax Act, 2017/CGST Act 2017. Though the petitioners have filed GSTR-1 returns in time, however, insofar as claim of ITC is concerned, since the petitioners were faced with certain difficulties, such as Financial constraints (as there was complete lockdown due to outbreak Covid-19) health related ailments, fire accidents, they were unable to file GSTR-3B returns, which prompted them not raising their claim ITC in time before the prescribed date. Whereas, the respondent-Department without considering such vital aspects and that reasons for the delay is not deliberate, issued the show cause notices to the petitioners, proposing to reverse the ITC availed and went to the extreme level of confirming the proposals contained in the show cause notices by passing the impugned orders,whereby, the claim



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made by the petitioners for ITC was reversed and the petitioners have been directed to tax/penalty/interest. Aggrieved against the impugned orders, the petitioners are before this Court by way of present Writ Petitions seeking for setting aside the impugned orders.

10. After the filing of these Writ Petitions, certain development took place, i.e. that 53rd GST Council Meeting was held on 22.06.2024, and during the said Meeting, the GST Council recommended for extension of the deadline for availing ITC on any invoice or debit note under Section 16(4) of the CGST Act and this extension would be applicable to any GSTR-3B returns filed for the Fys 2017-18, 2018-19, 2019-20 and 2020-21 with a new deadline deemed to be as "30.11.2021", to which, the Presidential Assent was also obtained by the Government of India on 16.08.2024, whereby, the financial proposals of the Central Government for the Financial Year 2024-25 was given effect to vide Finance Act, (No.2) of 2024, and in view of the aforesaid enactment, the Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs, issued a Notification, bearing No.17 of 2024-Central Tax, dated 27.09.2024, pursuant to which, a Circular



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No.237/31/2024-GST was issued by the Central Board of Indirect Taxes and

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Customs, which was addressed to all the Principal Chief

Commissioners/Chief

Commissioners/Principal

Commissioners/Commissioners of Central Tax (All), thereby, clarifying the

issues regarding implementation of provision of sub-section (5) and sub-

section (6) in Section 16 of CGST Act, 2017, the impugned orders are no

longer sustainable and liable to be quashed. In this context, it would be

apposite to refer to both Section 16(4) of the CGST Act, 2017, as well as

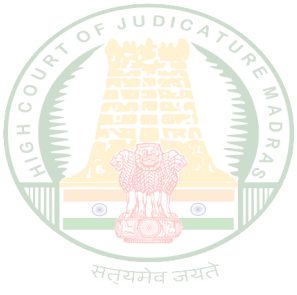
amendment made to Section 16 (4) by interpolations of sub-sections 16 (5)

and (6), and by insertion of sub-section (5) to Section 16, which are

extracted hereinunder:-

Section 16 (4)

" A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual



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return, whichever is earlier."

Section 16 (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 persons shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021."

10.1 Thus, a perusal of above Section 16 (5) makes it clear that 'notwithstanding anything contained in sub-section 4, referred to above, in respect of any invoice or debit note for supply of goods or services or both pertaining to the Fys 2017-18 to 2020-21, the registered persons shall be entitled to take ITC in any return under section 39 which is filed upto the 30th day of November, 2021.

10.2 Thus, this Court considering the fact that the issue involved in all these Writ Petitions is only with regard to the availment of ITC, which is



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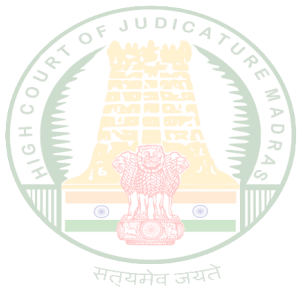
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barred by limitation in terms of Section 16 (4) of the CGST Act, and in the light of the subsequent developments took place, whereby, Section 16 of the CGST Act was amended and sub-section (5) was inserted to Section 16, which came into force with retrospective effect from 01.07.2017, the petitioners are entitled to avail ITC in respect of GSTR-3B filed in respect of FYs 2017-18, 2018-19, 2019-20 and 2020-21 as the case may be, on or before 30.11.2021, is inclined to quash the impugned orders.

11. Accordingly, this Court passes the following orders.

i) The orders impugned in all Writ Petitions are quashed insofar as it relates to the claim made by the petitioners for ITC which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017 but, within the period prescribed in terms of Section 16 (5) of the said Act.

ii) Therefore, the respondent-Department is restrained from initiating any proceedings against the petitioners by virtue of the impugned orders based on the issue of limitation.



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WEB COPY iii) In view of the fact that the impugned orders are quashed, the respondent-Department is directed to take immediate steps towards de-freezure of the concerned petitioners bank accounts, which have been freezed in furtherance of the impugned orders, by sending intimation to the concerned bankers.

iv) In the event, in the interregnum, i.e. during the pendency of these Writ Petitions, if any orders are proposed to be passed towards recovery, same shall be dropped immediately upon production of the order copy by the petitioners, in whichever case, where, there is no interim order.

v) It is also made clear that if at all, if there is any tax amounts were collected from the petitioners based on the impugned assessment orders from the cash ledgers/credit ledgers of the petitioners concerned, the same shall be refunded to them or by means of orders of this Court or even in the absence of any order from this Court, if any amount is deposited either in the cash ledgers/credit ledgers of the petitioners concerned, the same is permitted to



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be utilized/adjusted by the petitioners towards payment of future tax.

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vi) Insofar as the apprehension expressed by the learned Additional Advocate General for the respondent-Department that in certain Writ Petition apart from the issue on limitation, challenges have also been made to the order related to issues such as discrepancies in availing the ITC/wrong availment of ITC/excess claim of ITC/Fake ITC claim, as the case may be, or such other issues, liberty is be granted to the respondent-Department to proceed against the assessee/petitioners in furtherance of the impugned orders in accordance with law.

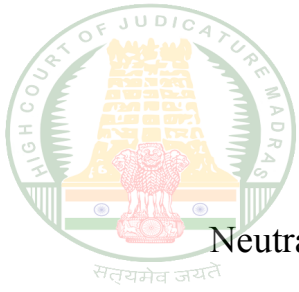
12. In the result, all the Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.10.2024

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Index : yes/no

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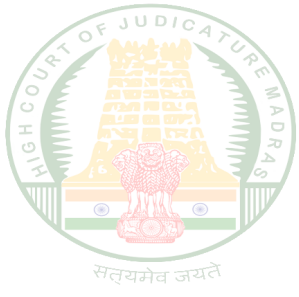
Neutral Citation : yes

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Krishnan Ramasamy,J.,

sd

W.P.No.25081 of 2024etc (batch)



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