

**IN THE HIGH COURT OF MADHYA PRADESH****AT INDORE****BEFORE****HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI****&****HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI****WRIT PETITION No. 2164 of 2024*****M/S ANAND STEEL (TRADE NAME)(PRO. SHRI JAGDISH
KUMAR MANSUKHANI)RATLAM MADHYA PRADESH****Versus****UNION OF INDIA AND OTHERS***

Appearance:

*Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate
for the petitioner.*

Ms. Khushbu Verma – Advocate for the respondent No.2.

WITH**WRIT PETITION No. 3757 of 2023*****M/S DIGIANA INDUSTRIES PRIVATE LIMITED THROUGH ITS
AUTHORISED SIGNATORY MS. REENA SALUJA****Versus****UNION OF INDIA AND OTHERS***

Appearance:

*Shri P.M.Choudhary Senior Advocate with Shri Anand
Prabhawalkar, Advocate for the petitioner.*

Ms. Khushbu Verma – Advocate for the respondent No.3.

WRIT PETITION No. 1280 of 2024



***M/S VITAL TRENDS PRIVATE LIMITED THROUGH ITS
AUTHORISED SIGNATORY MS. RAKHI SHIVANI***

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri P.M.Choudhary Senior Advocate with Shri Anand Prabhawalkar, learned counsel for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.4.

WRIT PETITION No. 1859 of 2024

***M/S DOSHI AGENCY (TRADE NAME) (PRO. SHRI PRAVEEN
KUMAR PARIKH) THROUGH ITS PROPRIETOR SHRI PRAVEEN***

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.2.

WRIT PETITION No. 2133 of 2024

***M/S EKTA ENTERPRISES TRADE NAME (PROP. SHRI SURESH
KUMAR MANSUKHANI)249/1/4 GROUND FLOOR DMART ROAD***

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.2.



WRIT PETITION No. 2964 of 2024

***M/S ARIHANTAM INFRAPROJECTS PRIVATE LIMITED
THROUGH AUTHORISED SIGNATORY MR. SACHIN KOTECHA
Versus
UNION OF INDIA AND OTHERS***

Appearance:

Shri P.M.Choudhary Senior Advocate with Shri Anand Prabhawalkar, learned counsel for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.4.

WRIT PETITION No. 3551 of 2024

***M/S U B INFRASTRUCTURE (PROP. VIKARAM ANJANA HUF)
THROUGH ITS PROPRIETOR SHRI VIKRAM SINGH ANJANA
Versus
UNION OF INDIA AND OTHERS***

Appearance:

Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.1.

WRIT PETITION No. 3664 of 2024

***M/S MODERN RETAIL (TRADE NAME) (PROP. SAPNA
CHANDNANI) THROUGH ITS PROPRIETOR SAPNA CHANDNANI
Versus
UNION OF INDIA AND OTHERS***

Appearance:



Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.2.

WRIT PETITION No. 13142 of 2024

M/S SAWRIYA CONSTRUCTION (PROP. JITENDRA SINGH SAWNER) THROUGH ITS PROPRIETOR SHRI JITENDRA SINGH
Versus
UNION OF INDIA AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.1.

WRIT PETITION No. 14857 of 2024

M/S SHREENATH AGRO ENTERPISES THROUGH ITS PROPRIETRO SHRI RAJESH GOYAL
Versus
UNION OF INIDA THROUGH THE CENTRAL BOARD OF INDIRECT TAXEX AND CUSTOMS THROUGH ITS CHAIRMAN AND OTHERS

Appearance:

Shri Sumit Nema - Senior Advocate with Arun Dwivedi – Advocate for the petitioner.

Ms. Khushbu Verma – Advocate for the respondent No.1, 2 and 3.

WRIT PETITION No. 14975 of 2024



***M/S ABDUL PARVEJ KHAN CONTRACTOR (TRADE NAME)
THROUGH ITS PROPRIETOR SHRI ABDUL PARVEJ KHAN
Versus
UNION OF INIDA THROUGH THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS AND OTHERS***

Appearance:

*Shri Sumit Nema - Senior Advocate with Arun Dwivedi on behalf of
Shri Piyush Parashar – Advocate for the petitioner.*

Shri Sudeep Bhargava – Advocate for respondent No.4.

Ms. Khushbu Verma, Advocate for respondent No.2 and 3.

Heard on : 20.09.2024

Pronounced on : 22.11.2024

Per Justice S.A. Dharmadhikari :

ORDER

Matter is heard finally with the consent of parties.

This order shall govern disposal of aforesaid Writ Petition Nos. 2164/2024, 3757/2023, 1280/2024, 1859/2024, 2133/2024, 2964/2024, 3551/2024, 3664/2024, 13142/2024, 14857/2024, 14975/2024.

Regard being had to the similitude of the controversy involved in the aforesaid petitions, they have been heard analogously and disposed of by this singular order.

For the sake of convenience, facts of W.P. No.2164/2024 are taken.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 27.07.2023(Annexure P-5) passed by respondent No.3 .



2. Brief facts giving rise to the present petition are that petitioner is a Proprietorship Firm registered under the provisions of Central Goods and Services Tax Act, 2017 (referred to as the 'CGST Act' hereinafter) having registration no. 23AGDPM2307D1Z4. During the financial year 2018-19, petitioner has duly filed GST returns for the months April 2018 to March, 2019 in FORM GSTR-3B alongwith the GST liability and late fee on outwards supplies and availed input tax rebate correctly as per their inward supplies for the relevant period in accordance with the provisions of Section 16 of the Act. Thereafter, respondent no.3 in FORM GST DRC-01 A notice was issued u/S 73 of the Act by the respondent no.3 on 27.07.2023 through which it is proposed to disallow the ITC for the tax period 2018-19 on the ground of late filing of return in FORM GSTR-3B. After receiving notice, petitioner has filed reply, but the Assistant Commissioner of COST as per the then existing unamended Act of GST passed the impugned original order dated 13.02.2024 under Section 74 of the GST Act.

3. Learned counsel for the petitioner has put forth the following submissions :

(i) Firstly, it is submitted that imposition of time limit for claiming ITC under Section 16(4) of the CGST Act violates Article 14, 19(1)(g) and 300A of the Constitution of India and, therefore, liable to be declared as ultra vires. It is further submitted that Section 16(4) puts arbitrary restriction/limitation on the right to avail input tax credit. Moreso, the input tax credit accrues to the person as soon as he purchase some product or receive some service which he is using or is intending to use in course or furtherance of business as per provisions of Section 16(1) of the CGST Act, thus disallowing the same on procedural lapse as per Section 16(4) of the Act is



arbitrary.

(ii) It is further submitted that Section 16(4) is causing loss to the registered tax payer by way of not allowing the eligible and legal input tax credit and, therefore, it is arbitrary, irrational and unreasonable to discriminate in terms of time-limit to allow the availment of the input tax credit with respect to purchase of Goods and service and, therefore, it is violative of Article 14 of the Constitution of India.

(iii) Learned counsel for the petitioner also submits that right to input tax credit for not being able to file the FORM GSTR 3B within the due date of September following the financial year offends the policy of Government to remove the cascading effect of tax by allowing the input tax credit as mentioned in the objects and reasons of the Constitution 122nd Amendment Bill, 2014 which clearly sets out that it is intended to remove the cascading effect of taxes and to bring out a nationwide taxation system.

(iv) Petitioner had already filed the returns, though with the late fees and interest applicable on it. Despite that credit of ITC is not allowed, thus petitioner is being penalized twice as he had paid the late fees alongwith tax and interest and is now again saddled with inadmissibility of input tax credit.

(v) Learned counsel drawing the attention of this Court to subsection (1) and (2) of Section 16 of the CGST Act submits that subsection(1) and (2) clearly stipulates that the input tax credit is allowed on fulfillment of certain conditions, which the petitioner had already complied with. Hence refusal to allow the claim under the garb of Section 16(4) of CGST Act is contrary to the aforesaid subsections.



(vi) Learned counsel raising the ground of legitimate exception submits that petitioner expects that the Government will notify the time limit for furnishing return in FORM GSTR-3B in due course of time and, therefore, the petitioner had reason to believe that once the time limit for filing of the return under Section 39(1) i.e. FORM GSTR-3 is notified, that date will be the date of availing of input tax credit as per the Section 16(4) of the CGST Act. The retrospective amendment to Rule 61(5) making GSTR-3B as return under Section 39, has therefore created panic in the trade and industry and has shocked the professional fraternity as well. The principle underlying is 'legitimate expectation', which is based on Article 14 and the Rule of fairness referred to in the judgment passed by Hon'ble Apex Court in the case of MRF Ltd. Vs. Assistant Commissioner (Assessment) Sales Tax reported in 2006(206) ELT (SC), wherein it was observed that person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation or from consistent past practice.

4. On all these grounds, Section 16(4) of CGST Act is arbitrary and unconstitutional being unjust and unfair on account of procedure available in the CGST Act in Section 16(4) of the Act, so as to enable the tax payer/purchaser to apply for condonation of delay in case return u/S 39 for relevant year is filed after due date mentioned in Section 16(4) of CGST Act. Hence, it is prayed that appropriate writ/order/direction to the effect declaring the sub-section 4 of Section 16 of CGST/MPGST, being ultra vires and de hors the Act and violative of Article 14, 19(1)(g), 265 and



300A of the Constitution of India.

5. Learned Addnl. Advocate General appearing on behalf of respondent no.5/State submits that controversy involved in this batch of writ petitions stand resolved by way of amendment in Section 16 of GST Act with the aid of Section 118 of Finance Act, 2024 by incorporating sub-section 5 and 6 in Section 16 of the Act. Learned AAG has further drawn the attention of this Court to the judgment passed by Madurai Bench of Madras High Court in W.P. No. 20773/2023 wherein similar controversy has been dealt with considering the enactment of Finance Act, 2024 whereby sub-section (5) of Section 16 of the Act was introduced and after setting aside the impugned order, the matter was remanded back to the adjudicating authority to consider afresh.

6. Heard, learned counsel for the petitioner and perused the record.

7. The present matter relates to imposition of time limit for claiming ITC under Section 16(4) of the CGST Act

8. Under the GST Act, assessee's are entitled for availing the Input Tax Credit(ITC) on purchase of good and services. ITC can be used to reduce the amount of GST to be paid to the Government when the assessee sales any item. Under the GST Act, the term ITC is defined as:

“input tax credit means the credit of input tax.”

9. Before advertng to the merits of the case, it would be apt to reproduce the relevant provisions of law governing the present matter.

Section 16 GST Act

Eligibility and conditions for taking ITC.

- (i) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, is entitled to take ITC charged on any supply of goods or services or both to him which are used or intended to



be used in the course of furtherance of his business and the said amount shall be credited to the electric credit ledger of such person.

(ii) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless:

(a) He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

(b) He has received the goods or services or both.

Explanation-For the purpose of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply: and

(d) He has furnished the return under Section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered persons shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount



towards the value of supply alongwith tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, alongwith interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both alongwith tax payable thereon.

10. Where the registered person has claimed depreciation on the tax component of the cost of capital goods, plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

11. 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 due date of furnishing of the return under Section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

12. The Central Government has resolved controversy by way of amendment in Section 16 of the GST Act with the aid of Section 118 of the Finance Act, 2024(referred to as the Act, 2024). Recently, the Central Government by way of notification dated 15.10.2024 has further clarified the issues regarding implementation of provisions of sub-section(5) and sub-section(6)in Section 16 of the Act.

Section 118 of the Act of 2024 by which Section 16 of the GST Act is being amended reads as under:



Section 118. In Section 16 of the Central Goods and Services Tax Act, with effect from 1st day of July, 2017, after sub-section(4), the following sub-sections shall be inserted, namely -

“(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 up to 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 up to 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.

13. In the considered opinion of this Court, as per the existing regime, every assessee registered under the GST portal has to file return annually under Section 39 of the GST Act and redeem input tax credit.

14. As per Section 16(4) of the Act, the assessee or a registered person



shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under Section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

15. The provision of Section 16(4) of the CGST Act which restricts the claim of ITC only on the ground that a return is filed after the date prescribed is arbitrary as well as the tax payer who is claiming the ITC has already made the payment of tax to the supplier from whom the goods and services has been received. The payments include both cost of service or goods and the amount of Tax, thus the taxpayer cannot be deprived from his right to claim ITC.

16. The interpretation of Section 16 of CGST Act which covers eligibility and conditions for taking ITC that a right on ITC is created when a tax payer fulfills all the conditions specified in Section 16(2) of the CGST Act which has been drafted as a non-obstante provision and to use the words of the Hon'ble Apex Court, this right can be earned by the beneficiary only as per scheme of that statute. However, imposition of a time limit through Section 16(4) would supersede or override this scheme of the statute operation of Section 16(4) makes the non-obstante section 16(2) meaningless; Section 16(2) has overriding effect on Section 16(4) and Section 16(2) has been drafted in a manner which shows clear legislative intent that it is not subject to Section 16(4).

17. The GST laws do not have any provision and scope for filing a revised return, taxpayers are extremely cautious to file the monthly return for March and may like to wait for a longer time to reconcile the entries and ensure that there is no unnecessary mismatch between the GST returns and the financial records. This exercise is generally taken when the



financial audit goes on . They even pay huge late fees to delay the filing of such return and such late fees are paid on subsequent returns also as GST laws does not permit filing of monthly return in FORM 3B if return for earlier month has not been filed. Allowing a taxpayer to file returns with payment of late fees and then disallow him the ITC, because the return was filed belatedly, is punishing him twice for a single default so committed. Moreover, with the payment of late fee u/S 47 as well as payment of interest u/S 50, the treasury has been suitably compensated for the postponement of the tax. Payment of late fees and interest are already there as deterrent for the taxpayers forcing them to be disciplined. Under such circumstances, saddling with double payment of tax by way of Section 16(4) is arbitrary and capricious.

18. Since, the Central Government by way of the Act of 2024 has proposed to amend Section 16 of the GST Act by introducing Section 118 of the Act of 2024, thereby jettisoning the condition of time limit, this Court is of the considered opinion that this batch of petitions deserves to be allowed without examining the constitutional validity of Section 16(4),

19. Accordingly, W.P. No(s). 2164/2024, 3757/2023, 1280/2024, 1859/2024, 2133/2024, 2964/2024,3551/2024, 3664/2024, 13142/2024, 14857/2024, 14975/2024 are allowed. Show cause notices and assessment orders passed by respondent no.3 in all the petitions are hereby set aside reserving liberty to the State to take appropriate action keeping in mind the amendment in GST law.

20. Petition stands disposed off.

(S.A. Dharmadhikari)
Judge

(Binod Kumar Dwivedi)
Judge