HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
W.P.No.24235 of 2022

Between:
Thirumalakonda Plywoods,
Rep. by its Sole Proprietor Kondalaiah Sunduru,
18-1-740-3, Shop No.2, Near Care and Cure Hospital,
Venugopal Nagar, NTR Marg, Anantapur,
Andhra Pradesh – 515 001.

.. Petitioner

And

The Assistant Commissioner – State Tax,
Anantapur Circle – 1, Anantapuramu Division,
Anantapur – PIN 515 001 and two others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 18.07.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

_____
U. DURGA PRASAD RAO, J

_____
T. MALLIKARJUNA RAO, J

***HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**
AND
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

+W.P.No.24235 of 2022

%18.07.2023

Thirumalakonda Plywoods,
Rep. by its Sole Proprietor Kondalaiah Sunduru,
18-1-740-3, Shop No.2, Near Care and Cure Hospital,
Venugopal Nagar, NTR Marg, Anantapur,
Andhra Pradesh – 515 001.

.. Petitioner

Vs.

$ The Assistant Commissioner – State Tax,
Anantapur Circle – 1, Anantapuramu Division,
Anantapur – PIN 515 001 and two others..

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner: Sri Rama Krishna Kumar Potturi

Counsel for respondents: Learned Advocate General for Respondent Nos.1 and 2 and The Deputy Solicitor General for 3rd respondent

? CASES REFERRED:

1. **2014 (310) E.L.T 812 (Trl. – Mumbai)**
2. **2016 (42) S.T.R. 542 (Tri. – Kolkata)**
3. **2019 (28) G.S.T.L. 281 (Tri. – Del)**
4. **2019 (24) G.S.T.L. 459 (Tri – Mumbai)**
5. **2016 (15) SCC 125 = [MANU/SC/0956/2016]**
6. **2013(5) CTC 63**
7. **(2019) 13 SCC 225**
8. **2018 SCC OnLine GUj 4833**
9. **(2011) 8 SCC 737**
10. **AIR1987SC1023 = MANU/SC/0073/1987**
11. **[1984] (Supp) SCR 196 = ANU/SC/0210/1984**
12. **AIR 1987 SC 117 = MANU/SC/0531/1986**
13. **AIR 1992 SC 81 = MANU/SC/0012/1992**
14. **AIR 1980 SC 2147 =MANU/SC/0159/1980**

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

Writ Petition No.24235 of 2022

ORDER: (*Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner prays for writ of mandamus declaring

(a) Section 16(4) of APGST Act, 2017 and Section 16(4) of CGST Act, is violative of Article 14, 19(1)(g) and Section 300-A of Constitution of India.

(b) That the non-obstante clause in Section16(2) of APGST/CGST Act, 2017 would prevail over Section 16(4) of APGST / CGST Act, 2017.

(c) That notification issued by Government of Andhra Pradesh vide G.O.Ms.No.264, dated 11.09.2020 and providing extension of time for filing returns only to the non-resident and not allowing such extension to the others and thereby distinguishing other tax payers on account of COVID-19 pandemic is arbitrary, illegal and violative of Article 14 of Constitution of India.

(d) That the action of Respondent No.1 in passing summary order vide ref No.ZD370322002865K, dated 15.3.2022 in Form GST DRC-07 under the GST Acts, without serving proper show cause notice in Form GST DRC-01 and granting sufficient opportunity to the petitioner U/s 74(5) of the Act and not considering petitioner's submissions and COVID-19 limitations r/w Amnesty Notifications but confirming the demand of tax, interest and penalty by restricting the credit with erroneous facts in spite of collection of late fee of Rs.10,000/- for the delay for filing the returns is not only violative of principles of natural justice but also arbitrary, improper, illegal and violative of Article 14, 19(1)(g), 20, 21 and 300-A of Constitution of India and consequently set aside the summary order / proceedings of the 1st respondent as null and void and pass such other order deemed fit in the circumstances of the case.

2. Petitioner's case briefly is thus:

(a) Petitioner is a sole proprietorship doing business in hardware and plywood with the trade name "Tirumalakonda Plywoods" commenced during

Covid-19 pandemic and registered under APGST Act and CGST Act during March, 2020.

(b) While so, petitioner received email dated 16.12.2021 U/s 74(1) of SGST /CGST Act r/w Section 20 of IGST Act, 2017 by the 1st respondent stating that the petitioner availed input for March, 2020 and sought reply in the light of Gazette notification of CCT's Ref.No.CCW/GST20015-A, dt; 30.0.6.2017.

(c) Though the above notice was sent through a private gmail ID and not following the procedure under rule 142 (1) of APGST Rules, 2017 and not served through its GST common portal or specified any time for reply as per Form GST DRC-01, still the petitioner submitted reply through e-mail dated 17.01.2022 with its Form GST DRC-06 and enclosed Annexure-I wherein the petitioner sought an opportunity U/s 74(5) of APGST Act, 2017, since the petitioner not only discharged late fee for delay in filing the return but also challenged notice with his detailed submissions.

(d) Instead of considering petitioner's reply in Form GST DRC 06, the 1st respondent surprisingly sent a personal hearing notice dated 22.02.2022 through private e-mail ID stating that the petitioner did not file reply against their notice nor opted for personal hearing and hence he has to file reply on or before 22.02.2022 and attend personal hearing on 02.03.2022.

(e) Against the above notice, the petitioner through his advocate confirmed that he already filed his reply dated 17.01.2022.

(f) Subsequently the petitioner received e-mail dated 14.03.2022 sent by the 1st respondent along with an attachment containing order vide AOO No.ZH370322OD48625, dated 14.03.2022 whereunder, without considering the objections raised by the petitioner in his reply, the 1st respondent wrongly held as if the petitioner made an irregular claim of ITC of an amount of Rs.4,78,626/- and fixed Rs.11,24,994/- towards tax, penalty and interest.

Hence the writ petition.

3. 1st respondent filed counter contending thus:

(a) The writ petition is perverse and liable to be dismissed in *limini* as the writ petition cannot be filed contrary to the legislative intent. Further, the petitioner has an efficacious alternative remedy of appeal.

(b) It is false to allege that notice dt: 16.12.2021 was sent by department through private e-mail ID. The said e-mail ID is the official e-mail ID allotted to the 1st respondent. Further, the notice was sent in Form GST DRC-01 as per Rule 142 of GST Rules, 2017 and various contentions raised by the petitioner in his reply have been considered in a just and proper manner and without any bias and they were rejected on cogent reasons. Further, before passing order, in terms of Section 75(4) and (5) of GST Act, 2017 a brief show cause notice was

issued and an opportunity of personal hearing was given to the petitioner. Thereby principles of natural justice were followed. As the reply filed by the petitioner was not in accordance with the provisions of GST Act and Rules, 2017 the same was rightly rejected. Therefore, it is false to core to contend that the reply filed by the petitioner was not considered before passing the impugned order. No provisions of Articles 14, 16 and 19(1)(g) of the Constitution of India have been infringed in the instant case. In fact those Articles have no relevancy to the case on hand.

(c) It is further contended that in view of plethora of decisions of Apex Court reiterating that short circuiting of the statutory remedies is not permissible when statutory alternative remedy is available, the writ petition is not maintainable. It is also contended that collection of late fee never be immune for other aspects such as output tax payment and demand for interest on belated payment as well as claiming of input tax with the prescribed conditions within the stipulated time period. The collection of late fee is exclusively relating to only for the issue of belated filing of return but not else. It never precludes the actions prescribed under the provisions in Section 61 to 74 of SGST/CGST Acts r/w Section 20 of IGST Act. The Government had given time upto 30.06.2020 for filing return relating to the month of March, 2020 but even then the petitioner not filed the return even after the date prescribed for filing the return relating to the month of September of succeeding year i.e., on or before

20.10.2020. The burden of filing monthly returns and other monthly statements lies with the petitioner. The petitioner can claim ITC subject to fulfillment of conditions laid in Section 16 of SGST / CGST Act r/w Section 20 of IGST Act. Section 16(4) of SGST / CGST Act is clear to the effect that any claim made through GSTR-III B return filed after prescribed date shall not be valid. Any time extended for filing returns either as a part of new enactment or as a part of COVID-19 has to be obliged and returns to be filed within such time only. If there is no time limitation, one would go on claiming ITC after indefinite period, which would defeat the very purpose of the limitation prescribed in the enactment. Therefore, it is the primary obligation of the taxable person to scrupulously abide the statutory obligations.

(d) It is not obligatory on the part of Assessing Authority to issue opportunity under Section 74(5) of the APGST / CGST Acts, 2017 as it is only optional. The petitioner obtained registration voluntarily and therefore, there is no separate provision or special exemption for the taxable person.

(e) It was only a proposal made to levy penalty at the rate equivalent to the amount of Input Tax irregularly claimed as the petitioner was reminded with an option for reduced penalty @ 25% of tax demanded if the petitioner pays tax and applicable interest within 30 days from the date of issuance of show cause

notice. But the petitioner did not exercise this option also. Hence the writ petition is liable to be dismissed.

4. The petitioner filed a lengthy reply denying the counter averments.

5. Heard arguments of Sri Rama Krishna Kumar Potturi, learned counsel for petitioner, learned Advocate General representing the respondents 1 & 2 and the Deputy Solicitor General Sri N.Harinath representing the 3rd respondent.

6. The following points emerge for consideration:

(1) Whether by virtue of imposition of time limit for claiming Input Tax Credit (ITC), Section 16(4) of the APGST Act and CGST Act, 2017 violated Article 14, 19(1)(g) and 300A of the Constitution of India and thereby, liable to be struck down?

(2) Whether Section 16(2) of the APGST / CGST Act, 2017 would prevail over 16(4) of APGST / CGST Act, 2017 and thereby if the conditions laid down in Section 16(2) of the APGST / CGST Act, 2017 are fulfilled, the time limit prescribed under Section 16(4) of the APGST / CGST Act, 2017 for claiming ITC will pale into insignificance?

(3) Whether the acceptance of Form GSTR-3B returns of March 2020 filed on 27.11.2020 by the petitioner with a late fee of Rs.10,000/- will exonerate the delay in claiming the ITC beyond the period specified under Section 16(4) of the APGST / CGST Act, 2017?

(4) Whether summary of the order dated 15.03.2022 under Form GST DRC-07 issued by the 1st respondent is vitiated by the non-serving of show cause notice under Form GST DRC-01 as per the procedure?

7. **Points 1 to 3:** These points are inextricably intertwined and hence, are taken up together.

8. **Contention of petitioner:** The primo geniture of poignant arguments of learned counsel for petitioner is that in view of the petitioner being new to business and started the same in the wake of COVID-19 pandemic, he could not file returns of March 2020 in time and with much difficulty he filed optional form of GSTR3B of March 2020 by 27.11.2020 and paid late fee of Rs.10,000/- which was accepted by the 1st respondent. As the return was accepted with late fee, learned counsel would argue, it shall be deemed, the 1st respondent exonerated the delay if any, for claiming ITC beyond the period prescribed under Section 16(4) of the APGST / CGST Act, 2017. As such after scrutiny, the 1st respondent ought to have allowed the ITC claimed by the petitioner. However, surprisingly the 1st respondent without issuing any show cause notice in proper form and without considering the reply dated 17.01.2022, sent the summary of the order dated 15.03.2022, whereunder, while unjustly disallowing the ITC of Rs.4,78,626/- made a demand for payment of Rs.11,24,994/- towards tax, interest and penalty under Section 74 of the APGST / CGST Act, 2017.

Learned counsel strenuously argued that Input Tax Credit is a statutory right which an assessee is entitled to claim and placing stumbling blocks by way of imposing time limit under Section 16(4) of the APGST / CGST Act, 2017 from claiming such right tantamount to violation of Article 14, 19(1)(g) and 300A of the Constitution of India. He would further argue, Section 16(2) of APGST Act / CGST Act, 2017 which commences with a "non-obstantee" clause will override Section 16(4) of the said Act, meaning thereby, if the conditions mentioned in Section 16(2) are complied with by an assessee, he will be entitled to claim ITC without reference to the time limit prescribed under Section 16(4) and in the instant case, since the 1st respondent permitted the petitioner to file return with late fee of Rs.10,000/-, the petitioner cannot be deprived of the right of ITC on the sole ground that claim was made beyond the period prescribed under Section 16(4).

(a) Learned counsel would argue that in the backdrop of facts, the imposition of interest and 100% of penalty that too without giving an opportunity of hearing the petitioner is atrocious and liable to be set aside. He placed reliance on (i) **Graintoch Industries Ltd. v. Commissioner of C. EX, Aurangabad**[1] (ii) **Sr. Post Master v. Commissioner of C. EX. & S.T. Bolpur**[2] (iii) **Candid Security Services v. Commissioner of C. EX. & S.T.,**

[1] **2014 (310) E.L.T 812 (Trl. – Mumbai)**
[2] **2016 (42) S.T.R. 542 (Tri. – Kolkata)**

Raipur[3] (iv) **Electic Developers Ltd. v. Commissioner of Central Excise, Goa**[4]**.**

9. **<u>Arguments of Advocate General</u>:** In oppugnation, the perspicuous argument of learned Advocate General is in the lines that it is misnomer to elevate the refund claim of ITC to the level of an unbridled legal right where in reality, it is no more than a statutory rebate or a mere concession given to a GST taxpayer as has been reverberated in a slew of judgments. He placed reliance on **Jayam and co. v. Assistant Commissioner**[5]**, USA Agencies v. The Commercial Tax Officer**[6]**, ALD Automotive Private Limited v. Commercial Tax Officer**[7]**.** He would emphasize, since the ITC is only a concession or rebate, the legislature in its wisdom has imposed certain conditions including prescription of time limit under Section 16(2) and (4) of the APGST / CGST Act, 2017 which shall be fulfilled by the taxpayer before laying a claim for refund of ITC. Therefore, he would argue neither the conditions mentioned in Section 16(2) nor the time limit in Section 16(4) can be attributed to be illegal or unconstitutional. He would submit, assuming ITC as a legal right, still the legislature has a right to impose time limit for claiming such right as has been done through Indian Limitation Act, 1863 whereunder, even against the

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[3] **2019 (28) G.S.T.L. 281 (Tri. – Del)**
[4] **2019 (24) G.S.T.L. 459 (Tri – Mumbai)**
[5] **2016 (15) SCC 125 = [MANU/SC/0956/2016]**
[6] **2013(5) CTC 63**
[7] **(2019) 13 SCC 225**

statutory right of filing appeal, time prescription was made and therefore, ITC claim which even if placed on the pedestal of a legal right, still cannot claim exemption. To buttress the said argument, he placed reliance on **Willowood Chemicals Pvt Ltd. V. Union of India**[8]

He would further submit that the operative sphere of Article 14 and 19(1)(g) and 300A of the Constitution of India is quite distinct from that of Section 16(4) of the APGST / CGST Act, 2017 and therefore, even in the wildest imagination one cannot authoritatively claim the latter has infringed the former. Learned AG would expatiate that in order to strike down a provision in a statute to be violative of Article 14, it must be established that the said provision is arbitrary and negated the equality. Said arbitrariness must be manifest from the provision impugned. In this context he relied upon **State of Tamil Nadu v. K. Shyam Sunder**[9]**.** Learned Advocate General while supporting the exaction of interest and 100% of penalty on the tax due, argued that the petitioner alone was not the sufferer of COVID-19 pandemic prevalent circumstances and other traders of his ilk who were under similar circumstances have filed their returns in due time and therefore the petitioner cannot be given special treatment. He thus prayed to dismiss the writ petition.

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[8] **2018 SCC OnLine GUj 4833**
[9] **(2011) 8 SCC 737**

10. **Court's Findings:** The precise reason why the Department proposed to levy tax, penalty and applicable interest invoking powers under Section 74(1) of the APGST Act, 2017 is that the petitioner filed monthly returns belatedly as mentioned below, after due date prescribed under Section 39 of the APGST Act, 2017 for the month of September 2020 and thereby claimed ITC of Rs.4,78,626/- irregularly in contravention of the provisions under Section 16(4) of the APGST Act / CGST Act read with Section 20 of the IGST Act, 2017.

S. No.	Year	Tax period	GSTR 3B RETURN		Prescribed date for filing for the month of succeeding year September	Amount of ITC irregularly claimed under all acts
			Due date for filing	Date of filing		
1.	2019-20	Mar 2020	30.06.2020	27.11.2020	20.10.2020	4,78,626

(a) The petitioner was served with show cause notice, for which he filed written objections and according to the Department, personal hearing was accorded on 02.03.2022. The impugned assessment order dated 14.03.2022 would show, the petitioner had taken about 10 factual and legal objections which were discussed and rejected by 1st respondent in the impugned order by confirming the demand of Rs.11,24,994/- comprising (i) tax of Rs.4,78,626/- (ii) interest of RS.1,67,742/- and (iii) penalty of Rs.4,78,626/-

(b) Of the objections raised, objection Nos.6 and 7 are important, the substance of which is that in view of the non-obstante clause employed in

Section 16(2) of the APGST Act / CGST Act, it would have primacy over Section 16(4) of those Acts, meaning thereby, when the return submitted by the petitioner is accepted with late fee, the time limit prescribed for claiming ITC can be safely ignored and ITC can be allowed on verification of relevant particulars and documents furnished along with return. This argument was rejected by the 1st respondent on the prime ground that the collection of late fee can never be an immune for other aspects such as output tax payment, demand for interest on belated payment as well as claiming of input tax credit (ITC) beyond the stipulated time period. In other words, the collection of late fee exclusively relates to the issue of belated filing of return but not else. It would not preclude the action prescribed under Section 61 to 74 of SGST/CGST Acts r/w Section 20 of IGST Act. The petitioner has not filed the return within the prescribed time of 30.06.2020 for the month of March, 2020 nor filed the return on or before 20.10.2020 which was the prescribed time for filing the return relating to the month of September of succeeding year. The 1st respondent thus observed that the petitioner can claim ITC subject to fulfillment of conditions stipulated in Section 16 of SGST/CGST Act r/w Section 20 of IGST Act and the claim made through GSTR 3B return filed after prescribed date was not valid.

In the light of above diverse contentions the concept of ITC and relevant provisions have to be perused.

11. The input tax credit owed its genesis to the legislative measure of introducing APGST/CGST Acts to eradicate cascading effect of taxes which existed under Excise, VAT and Service tax. Input Tax is the tax paid by the buyer on purchase of goods or services. Such tax which is paid by the purchaser can be reduced from the liability payable on outward supplies known as Output Tax. Precisely input tax credit is the tax reduced from output tax payable on account of sale. For instance 'A' purchased goods worth Rs.18,000/- on which he paid GST of Rs.3,240/- at 18%. Then he sold goods worth Rs.22,000/- whereon GST payable @ 18% is Rs.3,960/-. Thus the net GST payable after availing input tax credit is Rs.720/- (3,960-3,240). In that manner the assessee gets the ITC. Under Section (2) (63) of APGST Act, 2017 an Input Tax Credit means the credit of Input Tax.

12. Be that as it may, the controversy revolves around the interpretation of Section 16 (2) and (4) of APGST Act/CGST Act. Before examining the effect of Section 16(2) and (4) of APGST/CGST Act it is relevant to ruminate the cardinal principle of interpretation. In **Reserve Bank of India v. Peerless General Finance and Investment Co Ltd**[10] the Apex Court observed thus:

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That

[10] **AIR1987SC1023 = MANU/SC/0073/1987**

interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

13. Now it is pertinent to extract Section 16(2) and (4) of APGST/CGST Act. They are:

Section 16 of APGST Act reads thus:

"16. Eligibility and conditions for taking input tax credit

1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

2) 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 taxpaying documents as may be prescribed;

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

[Explanation:- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [Section 41 or Section 43A], 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 person shall be entitled to take credit upon receipt of the last lot or installment:

Provisional Reversal of ITC

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 along with 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, along with 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 along with tax payable thereon.

3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and 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.

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 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."

14. Then Section 16 of CGST Act reads thus:

"16. Eligibility and conditions for taking input tax credit.-

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) 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 taxpaying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37][11]

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

[**Explanation**.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;][12]

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;][13]

(c) subject to the provisions of [section 41][14] [***][15], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

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[11] Inserted by Finance Act, 2021, w.e.f 1-1-2022 vide Noti. No.39/2021-Central Tax, dt.21-12-2021
[12] Substituted by the CGST (Amdt.) Act, 2018 (31 of 2018), dt.30-08-2018, w.e.f.1-2-2019 vide Noti. No.02/2019-Central Tax, dt.29-1-2019.
[13] Inserted by Finance Act, 2022
[14] Substituted for "Section 41, CGST (Amdt.) Act, 2018 (31 of 2018, dt.30-8-2018. Effective date yet to be notified
[15] Words "or section 43A" omitted by Finance Act, 2022

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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 along with 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, along with 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 along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(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][16] following the end of financial year to which such invoice or [****][17] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[PROVIDED that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any

[16] Substituted for "due date of furnishing of the return under section 39 for the month of September" by Finance Act, 2022
[17] Words "invoice relating to such" omitted by the Finance Act, 2020 (12 of 2020), dt.27-3-2020, w.e.f 1-1-2021 vide SO 464(E), dt.22-12-2020.

invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.][18]

15. On a careful scrutiny, Section 16 of the APGST Act, 2017 prescribes the eligibility and conditions for a GST assessee to claim credit of Input Tax which was charged on any supply of goods or services or both which were used or intended to be used in the course of furtherance of his business. Precisely while Section 16 sub-section (2) prescribes the eligibility criteria which is *sine qua non* for claiming ITC, subsection (3) and (4) impose conditions or limitation for claiming ITC. In other words, even if an assessee passes basic eligibility criteria imposed under section 16(2), still he will not be entitled to claim ITC if his case falls within the limitations prescribed under sub-sections (3) and (4).

(a) Pithily stating the eligibility criteria prescribed under sub-section (2) is thus:

(i) The assessee shall be in possession of tax invoice or debit note or such other taxpaying documents as issued by a registered supplier.

(ii) The assessee has physically received the goods or services or both. Provided, where the goods against invoices are received in lots or instalments, assessee shall be entitled to take ITC upon receipt of a last lot or instalment;

[18] Inserted vide Removal of Difficulties Order, 2018-Central Tax, dt.31-12-2018, w.e.f.31-12-2018

(iii) The tax charged in respect of such supply has been actually paid to the Government

(iv) The assessee has furnished the return under Section 39

(b) Then sub-section (3) imposes condition on ITC saying that where the assessee claimed depreciation on the tax component of the cost of capital goods and plant & machinery under the Income Tax Act, 1961, then ITC shall not be allowed on such tax component.

(c) Then sub-section (4) prescribes another limitation for claiming ITC. It says that an assessee shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after due date of furnishing of return under Section 39 for the month of September following the end of financial year, to which such invoices or debit note pertains or furnishing of the relevant annual returns whichever is earlier. In other words, if an assessee fails to furnish the returns within the time as stated supra, he will not be entitled to claim ITC.

16. It should be noted Section 16 of CGST Act, 2017 is in *pari materia* with Section 16 of APGST Act, 2017 with minor differences which are not much relevant in the present context. Hence this section needs no much elaboration.

17. When the contention of the petitioner that in view of *non obstante* clause, Section 16(2) overrides Sub Section (4) is examined, no doubt Section 16 (2)

starts with a *non obstante* clause as "Notwithstanding anything contained in this Section". The general purpose of a *non obstante* clause has been explained in a plethora of decisions.

(i) In **Union of India v. G.M. Kokil and others** [19] it was observed thus:

> "It is well-known that a non obstane clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions."

(ii) In **Chandavarkar Sita Ratna Rao v. Ashalata S. Guram**[20] the Apex Court held

> **"69.** A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment"

(iii) In **R.S Raghunath v. State of Karnataka**[21] the Apex Court observed:

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[19] **[1984] (Supp) SCR 196 = MANU/SC/0210/1984**
[20] **AIR 1987 SC 117 = MANU/SC/0531/1986**

> "**22**. On a conspectus of the above authorities it emerges that the non obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. "

(iv) In **Maru Ram v. Union of India**[22] the Apex Court referred the ratio in Godse's case MANU/SC/0156/1961 and observed thus:

> "**20.** We cannot agree with counsel that the non obstante provision impliedly sustains. It is elementary that a non obstante tail should not wag a statutory dog (see for similar idea, "The Interpretation and Application of Statute's by Reed Dicker-son, p, 10). This Court has held way back in 1952 in Aswini Kumar Chose, MANU/SC/0022/1952 : [1953] 4 SCR1 that a non obstante clause cannot whittle down the wide import of the principal part. The enacting part is clear and the non obstante clause cannot cut down its scope"

(v) In **A.G Varadarajulu v. State of Tamilnadu reported in** MANU/SC/0232/1998: (1998) 4 SCC 231, observed that it is well settled that while dealing with a non-obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. The Bench referred to the principle in the Constitution Bench decision in **Madhav Rao Scindia v. Union of India** MANU/SC/0050/1970 : (1971) 1 SCC 85 wherein it was

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[21] **AIR 1992 SC 81 = MANU/SC/0012/1992**
[22] **AIR 1980 SC 2147 =MANU/SC/0159/1980**

held that the non-obstante clause was a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override, but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands alone by itself (See p. 236).

(vi) In **ICICI Bank Ltd v. SIDCO Leathers Ltd.,** reported in MANU/SC/2337/2006: (2006) 10 SCC 452, that the wide amplitude of a non-obstante clause must be kept confined to the legislative policy and it can be given effect to, to the extent the Parliament intended and not beyond the same and that in construing the provisions of a non-obstante clause, it was necessary to determine the purpose and object for which it was enacted (See page 465-6).

(vii) In **Central Bank of India v. State of Kerala** reported in MANU/SC/0306/2009 : (2009) 4 SCC 94, **this Court** reiterated that while interpreting a non-obstante clause the court is required to find out the extent to which the legislature intended to give it an overriding effect.

18. The above jurimetrical jurisprudence expounds that a *non obstante* clause is a legislative device usually employed in a statute to give overriding effect to certain provisions over some other contradictory provisions in the same or other statute. The Court shall try to find out the extent to which the legislature had intended to give the overriding effect to the enacting part of the provision succeeding to the *non obstante* clause over rest of the provision. Now the pertinent question is whether Section 16 Sub Section (2) overrides the rest of the Section particularly Sub Section (4).

19. When analyzed, Section 16(2) shall not appear to be a provision which allows input tax credit, rather ITC enabling provision is Section 16(1). On the other hand, Section 16(2) restricts the credit which is otherwise allowed to only such cases where conditions prescribed in it are satisfied. Therefore, Section 16(2) in terms only overrides the provision which enables the ITC i.e., Section 16(1). This is evident from the manner in which Section 16(2) is couched. The *non obstante* clause in Section 16(2) is followed by a negative sentence ***"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***". This negative sentence pellucidly tells that unless the conditions mentioned in Section 16(2) are satisfied, no credit will be eligible. This stipulation manifests that Section 16(2) is not an enabling provision but a restricting provision. What it restricts is the eligibility which was otherwise given U/s 16(1).

(a) It should be noted, when a *non obstante clause* is a mere restricting provision, an interpretation that the other restricting provisions will not have effect or that the restricting provision will restrict other restricting provisions cannot be accepted for the reason that there is no contradiction between the restricting clause followed by *non obstante* and other restricting provisions.

In **R.S. Raghunath's** case (supra 21) the Apex Court held thus:

> "**11.** Xxxx. The non-obstante clause is sometimes appended to a section or a rule in the beginning with a view to give the enacting part of that section or rule in case of conflict, an overriding effect over the provisions or act mentioned in that clause. Such a clause is usually used in the provision to indicate that the said provision should prevail despite anything to the contrary in the provision mentioned in such non-obstante clause."

Hence unless such clear inconsistency is established, overriding effect cannot be given over other provisions. In the present case both Section 16(2) and (4) are two different restricting provisions, the former providing eligibility conditions and the later imposing time limit. However, both these provisions have no inconsistency between them. In **R.S. Raghunath**, the Apex Court further observed thus:

> "But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the

> enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

Further, the influence of a *non obstante* clause has to be considered on the basis of the context also in which it is used. Therefore, Section 16(4) being a non-contradictory provision and capable of clear interpretation, will not be overridden by *non obstante* provision U/s 16(2). As already stated supra 16(4) only prescribes time restriction to avail credit. For this reason, the argument that 16(2) overrides 16(4) is not correct.

Thus in substance Section 16(1) is an enabling clause for ITC; 16(2) subjects such entitlement to certain conditions; Section 16(3) and (4) further restrict the entitlement given U/s 16(1). That being the scheme of the provision, it is out of context to contend that one of the restricting provisions overrides other two restrictions. The issue can be looked into otherwise also. If really the legislature has no intention to impose time limitation for availing ITC, there was no necessity to insert a specific provision U/s 16(4) and to further intend to override it through Section 16(2) which is a futile exercise.

20. Then the next contention of the petitioner is that since Form GSTR-3B return of March, 2020 filed on 27.11.2020 by the petitioner was accepted with a late fee of Rs.10,000/-, such acceptance will exonerate the delay in filing return U/s 16(4) and therefore along with his return, the ITC claim shall also be

considered. In our considered view this argument holds no much force for the reason that the conditions stipulated in Section 16(2) and (4) are mutually different and both will operate independently. Therefore, mere filing of the return with a delay fee will not act as a springboard for claiming ITC. As rightly argued by learned Advocate General, collection of late fee is only for the purpose of admitting the returns for verification of taxable turnover of the petitioner but not for consideration of ITC. Such a statutory limitation cannot be stifled by collecting late fee.

21. The further argument of the petitioner that Section 16(4) of APGST/CGST Act, 2017 violates Article 14, 19(1)(g) and 300-A of the Constitution of India is concerned, the said argument has no vitality for the reason, firstly the ITC is a mere concession/rebate/benefit but not a statutory or constitutional right and therefore imposing conditions including time limitation for availing the said concession will not amount to violation of constitution or any statute and secondly, as rightly argued by learned Advocate General, the operative spheres of Section (16) and constitutional provisions under Article 14, 19(1)(g) and 300-A are different and hence infringement does not arise. That, by nature ITC is a concession/rebate/benefit but not a statutory right has been reiterated in a thicket of decisions.

In **Jayam and Co v. Assistant Commissioner'**s case (supra 5) the Apex Court with reference to Section (19) of Tamilnadu Value Added Tax Act, 2016 held that ITC is a concession. The Apex Court observed thus:

> **"11.**xxxx
>
> From the aforesaid scheme of Section 19 following significant aspects emerge:
>
> (a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.
> (b) Concession of ITC is available on certain conditions mentioned in this Section.
> (c) One of the most important conditions is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.
>
> 12. It is trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but it is a concession granted by virtue of Section 19. As a fortiori, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis."

22. In **ALD Automotive Pvt. Ltd's** case (supra 7) Section 19(11) of Tamilnadu VAT Act, 2006 which imposes time limit for claiming input tax

credit was challenged on the ground that it was arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. IN that context while upholding the time prescription U/s 19(11) of the said Act the Apex Court on the following aspects observed thus:

(i) **Interpretation of taxing statutes**:

> **"36.** This Court had the occasion to consider the Karnataka Value Added Tax Act, 2013 in *State of Karnataka* v. *M.K. Agro Tech. (P) Ltd.* This Court held that it is a settled proposition of law that taxing statutes are to be interpreted literally and further it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. The following was stated in para 32: (SCC p. 223)
>
> > "*32.* Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods *plus* the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same."

(ii) **Nature of input tax credit**:

> **"34.** The input credit is in the nature of benefit/concession extended to the dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Reference is made to the judgment of this Court in *Godrej & Boyce Mfg. Co. (P) Ltd.* v. *CST*. Rules 41 and 42 of the Bombay Sales Tax Rules, 1959 provided for the set-off of the purchase tax.

This Court held that the rule-making authority can provide curtailment while extending the concession."

37 The judgment on which the learned Advocate General of Tamil Nadu had placed much reliance i.e. *Jayam & Co.* v. *Commr.* is the judgment which is relevant for the present case. In the above case, this Court had the occasion to interpret the provisions of the Tamil Nadu Value Added Tax Act, 2006, Section 19(20), Section 3(2) and Section 3(3). Validity of Section 19(20) was under challenge in the said case. This Court after noticing the scheme under Section 19 noticed the following aspects in para 11: (SCC p. 134)

"*11.* From the aforesaid scheme of Section 19 the following significant aspects emerge:

(*a*) ITC is a form of concession provided by the legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.

(*b*) Concession of ITC is available on certain conditions mentioned in this section.

(*c*) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.

38. This Court further held that it is a trite law that whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession."

(iii) **Constitutional validity of Section 19**:

"39 . The constitutional validity of Section 19(20) was upheld. The above decision is a clear authority with proposition that input tax credit is admissible only as per conditions enumerated under Section 19 of the Tamil Nadu Value Added Tax Act, 2006. The interpretation put up by this Court on Sections 3(2) and 3(3) and Section 19(2) is fully attracted while considering the same provisions of Sections 3(2) and 3(3) and the provision of Section 19(11) of the Act. The statutory scheme delineated by Section 19(11) neither can be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1)(*g*) of the Constitution."

(iv)**With regard to time prescription laid under section 19(11)**:

"40. The alternative submission pressed by the learned counsel for the appellant was that Section 19(11) cannot be held to be

> mandatory and it is only a directory provision, non-compliance with which cannot be ground of denial of input tax credit to the appellant. The conditions under which input tax credit is to be given are all enumerated in Section 19 as noticed above. The condition under which the concession and benefit is given is always to be strictly construed. **In event, it is accepted that there is no time period for claiming input tax credit as contained in Section 19(11), the provision becomes too flexible and gives rise to large number of difficulties including difficulty in verification of claim of input credit. Taxing statutes contain self-contained scheme of levy, computation and collection of tax. The time under which a return is to be filed for the purpose of assessment of the tax cannot be dependent on the will of a dealer. The use of the word "shall" in Section 19(11) does not admit to any other interpretation except that the submission of input claimed cannot be beyond the time prescribed."** (Emphasis Supplied)

23. In **USA Agencies'** case (**supra 6**) the challenge before High Court of Madras was the vires of Section 19(11) of Tamilnadu VAT Act, 2006 which prescribed modalities and time frame as regards availment of input tax credit. The High Court of Madras held thus:

> " 38. Provision for availing concession is to be strictly construed and followed. **"Input Tax Credit", which is in the nature of concession or indulgence, could be availed only in the manner prescribed under Section 19. Law is well settled that the person, who claims exemption or concessional rate, must obey and fulfill the mandatory requirements exactly. Unless there is strict compliance with the provisions of the statute, the registered Dealer is not entitled to claim "Input Tax Credit". Apart from Section 19 of TN VAT Act, there is no independent right to claim "Input Tax Credit". When Section 19(11) stipulates time frame for availment of "Input Tax Credit", the registered Dealer must strictly follow the mandatory requirements of the provision.** (Emphasis Supplied)
>
> **39.** The availment of Input Tax Credit is creature of Statute. The concession of Input Tax Credit is granted by the State Government so that the beneficiaries of the concession are not required to pay the tax or duty which they are otherwise liable to pay under TN VAT Act. While so extending the concession, it is open to the Legislature to impose conditions. Section 19(11) is one such condition imposed making it mandatory for the registered Dealer to claim Input Tax Credit before the end of the financial year or

> before ninety days from the date of purchase, whichever is later. The entitlement to claim Input Tax Credit is created by TN VAT Act and the terms on which Input Tax Credit can be claimed must be strictly observed."

Regarding constitutional validity of fiscal legislation, the Court further observed thus:

> "**61.***Constitutional Validity of Fiscal Legislation:*
> When there is a challenge to the Constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a Constitutional provision is established. The burden is on the person, who attacks the Constitutional validity of a statute, to establish clear transgression of Constitutional principle."

24. In **Willowood Chemicals Pvt Ltd. v. Union of India (supra 8)** before Gujarat High Court, *inter alia* the rule 117 of CGST Rules which prescribed the time limit for making declaration of available tax credits as on 30.06.2017 was challenged as *ultra vires* to the Constitution and it was contended such time limit should be read as directory and not mandatory. The High Court of Gujarat held thus:

> **"50.** While the entire tax structure within the country was thus being replaced by a new framework, it was necessary for the Legislature to make transitional provisions. Section 140 of the CGST Act, which is a transitional provision, essentially preserves all taxes paid or suffered by a dealer. Credit thereof is to be given in electronic credit register under the new statute, only subject to making necessary declarations in prescribed format within the prescribed time. As noted, sub-section (1) of Section 164 of the CGST Act authorizes the Government to make rules for carrying

> out the provisions of the Act on recommendations of the Council. Sub-section (2) of Section 164 further provides that without *prejudice* to the generality of the provisions of sub-section (1), the Government could also make rules for all, or any of the matters, which by this Act are required to be or may be prescribed or in respect of which, provisions are to be or may be made by the rules. Combined effect of the powers conferred to subordinate Legislature under sub-sections (1) and (2) of Section 164 of the CGST Act would convince us that the prescription of time limit under sub-rule (1) of Rule 117 of the CGST Rules is not *ultra vires* the Act. Likewise, such prescription of time limit cannot be stated to be either unreasonable or arbitrary. When the entire tax structure of the country is being shifted from earlier framework to a new one, there has to be a degree of finality on claims, credits, transfers of such credits and all issues related thereto. The petitioners cannot argue that without any reference to the time limit, such credits should be allowed to be transferred during the process of migration. Any such view would hamper the effective implementation of the new tax structure and would also lead to endless disputes and litigations. As noted in case of *USA Agencies* (supra), the Supreme Court had upheld the *vires* of a statutory provision contained in the Tamil Nadu Value Added Tax Act which provided that the dealer would have to make a claim for input tax credit before the end of the financial year or before ninety days of purchase; whichever is later. The *vires* was upheld observing that the Legislature consciously wanted to set up the time frame for availment of the input tax credit. Such conditions therefore must be strictly complied with. Thus, merely because the rule in question prescribes a time frame for making a declaration, such provision cannot necessarily be held to be directory in nature and must depend on the context of the statutory scheme.**"**

25. Though above decisions deal with ITC claim related to the concerned State laws, however since concept of ITC is one and the same, those decisions will equally apply to the case on hand. Thus, it is clear that ITC being a concession/benefit/rebate, the legislature is within its competency to impose certain conditions, including time prescription for availing such right and the same cannot be challenged on the ground of violation of Constitutional provisions. As rightly argued by learned Advocate General, the operative

spheres of those Articles is different from that of Section 16. In order to establish legislative arbitrariness, it must be proved that the action was not reasonable or done capriciously or at pleasure, non rational, not done or acting according to reason or judgment but depending on the will alone. Then only it can be held to have violated Article 14 of the Constitution vide **State of Tamilnadu & others v. K. Syam sundar (supra 9).**

26. We have gone through the citations relied upon by the petitioners. They are mostly facts oriented decisions wherein it was observed that when the delay for filing returns was properly explained, penalty was not impossible. They are not touching upon the vires of Section 16 of APGST/CGST Act.

27. Thus on a conspectus of facts and law, we hold

(i) **Point No.1**: The time limit prescribed for claiming ITC U/s 16(4) of APGST Act/CGST Act, 2017 is not violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.

(ii) **Point No.2**: Section 16(2) of APGST/CGST Act, 2017 has no overriding effect on Section 16(4) of the said Act as both are not contradictory with each other. They will operate independently.

(iii) **Point No.3**: Mere acceptance of Form GSTR-3B returns with late fee will not exonerate the delay in claiming ITC

beyond the period specified U/s 16(4) of APGST/CGST Act, 2017.

POINT No.4:

With regard to these contentions, a perusal of impugned Assessment Order dated 14.02.2022 passed by the 1st respondent shows that the present contentions that the notice was not issued in proper form and that no opportunity was granted for hearing etc., which were taken in objections 1 to 10 of the reply by the petitioners were vividly discussed and rejected by the 1st respondent. Hence we see no force in the present contentions.

28. Thus on a conspectus of facts and law and in view of findings in Points 1 to 4, the writ petition is dismissed. No costs.

As a sequel, interlocutory applications, pending if any shall stand closed.

U. DURGA PRASAD RAO, J

T. MALLIKARJUNA RAO, J

18.07.2023
krk

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO

W.P.No.24235 of 2022

18th July, 2023