APHC010212852021	IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI	Bench Sr.No:-12 [3543]

WRIT PETITION NO: 12234 of 2021

M/s.h.r.constructions, ...Petitioner

Vs.

Superintendent Of Central Tax and Others ...Respondent(s)

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CORAM : SRI JUSTICE NINALA JAYASURYA
SRI JUSTICE T.C.D.SEKHAR

DATE : 6th August 2026

Present :

Advocate for Petitioner: S SURI BABU

Advocate(s) for Respondent(s): B V S CHALAPATI RAO

HON'BLE SRI JUSTICE NINALA JAYASURYA

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

WP No.12234 OF 2021

ORDER:- *(Per Hon'ble Sri Justice T.C.D. Sekhar)*

1. The present writ petition is filed seeking to declare Section 16(4) of CGST Act, 2017 as well as Section 16(4) of APGST Act and Section 20 of IGST Act as contrary to non-obstante clause contained in Section 62 of CGST Act and to set aside order of assessment dt.18.02.2021 passed by the 1st respondent.

2. The petitioner is a registered dealer under GST Act. The petitioner has availed Input Tax Credit of Rs.16,34,365/-. By contending that the petitioner had irregularly availed Input Tax Credit in contravention of Section 16(4) of the Act read with Section 20 of IGST Act, inasmuch as the due date for availing Input Tax Credit on invoices pertaining to Financial Year 2018-19 was 20.10.2019, whereas the petitioner had availed the same on 20.12.2019 i.e., beyond the date prescribed under the said provisions.

3. The 1st respondent issued intimation notice in Form GST DRC-01A, dt.03.11.2020 to the petitioner followed by show cause notice. The petitioner filed its reply dt.11.01.2021 stating that there was delay in receipt of payments from the Government, therefore there was delay in filing of GSTR-3B returns. After taking into consideration of the objections raised by the petitioner, the 1st respondent by impugned order dt.18.02.2021 directed the petitioner to pay or reverse the Input Tax Credit irregularly availed by the petitioners. Aggrieved by the said order, the present writ petition is filed.

4. Heard Sri S.Suri Babu, learned counsel appearing for petitioner and Sri B.V.S.Chalapathi Rao appearing for respondent Nos.1 & 2.

5. Perused the material available on record.

6. As per Section 16(4) of the Act, the petitioner had to avail Input Tax Credit on or before 20.10.2019 in relation to financial year 2018-19. From the record, it is evident that the petitioner had availed Input Tax Credit on 20.12.2019 i.e., beyond the time prescribed under the statute.

7. During the course of hearing, the counsel for the petitioner submit that in view of insertion of Section 16(5), the registered person is entitled to take Input Tax Credit in respect of return filed under Section 39, if the same is filed upto 30.11.2021 in relation to the financial years 2017-18 to 2020-2021. He would further submit that by virtue of the said introduction of Section 16(5), there is no restriction on the petitioner to avail the Input Tax Credit as the same was taken before 30.11.2021 and requested this Court to allow the writ petition by setting aside the impugned order.

8. The counsel for respondents while not disputing the submissions made by the counsel for the petitioner, would submit that, while entertaining the writ petition this Court by order dt.29.06.2021, directed the petitioner to file appeal as against the order under challenge. He would further submit that in tune with the said order, the petitioner filed appeal before the Appellate Authority and the same is pending consideration. In such circumstances, he cannot pray for setting aside the order under challenge.

9. We have considered the respective submissions made by the counsel on either side. It is not in dispute that by virtue of introduction of Section 16(5) of GST Act, the assesses are allowed to avail Input Tax Credit in any return under Section 39, if it is filed on or before 30.11.2021. In the case on hand, the petitioner has availed Input Tax Credit in relation to financial year 2018-2019 on 20.12.2019 i.e., beyond the cut of date before introduction of Section 16(5).

10. During the course of hearing, the counsel for the petitioner would submit that the petitioner is intending to withdraw the appeal filed by it. He would further submit that the petitioner is not interested to pursue the prayer challenging the validity of Section 16(4) of CGST & APGST and Section 20 of IGST Act, in view of introduction of Section 16(5) of GST Act.

11. Taking into consideration of the said submissions of the counsel for the petitioner, we deem it appropriate to set aside impugned order 18.02.2021 in view of introduction of Section 16(5) of GST Act, inasmuch as a time limit for availing Input Tax Credit was extended to 30.11.2021.

12. Accordingly, the writ petition is allowed. There shall be no order as to costs.

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

JUSTICE NINALA JAYASURYA

JUSTICE T.C.D. SEKHAR

06.08.2026
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HON'BLE SRI JUSTICE NINALA JAYASURYA
AND

THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR

WP No.12234 of 2021
Date 06.08.2026

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