APHC010524902026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3543]
(Special Original Jurisdiction)

MONDAY, THE 5th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 28607 OF 2026

Between:

1. M V POWER SOLUTIONS, GSTIN 37AQMPA1208Q1ZO, SHOP NO.135, SRINIVASA NAGAR, SRINIVASA COMPLEX, NANDYAL, NANDYAL DISTRICT, ANDHRA PRADESH -518501, REPRESENTED BY ITS PROPRIETOR/AUTHORISED REPRESENTATIVE SRI SAMUDRAPU ASHOK.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PRINCIPAL SECRETARY, COMMERCIAL TAXES DEPARTMENT, SECRETARIAT, VELAGAPUDI, AMARAVATI, ANDHRA PRADESH,522237.
2. THE CHIEF COMMISSIONER STATE TAX, ANDHRA PRADESH, D.NO.12-468-4, ADJACENT TO NH-16, KUNCHANAPALLI, GUNTUR DISTRICT, ANDHRA PRADESH,522501.
3. THE COMMISSIONER STATE TAX, ANDHRA PRADESH, D.NO.12-468-4, ADJACENT TO NH-16, KUNCHANAPALLI, GUNTUR DISTRICT, ANDHRA PRADESH,522501.
4. THE ASSISTANT COMMISSIONER STATE TAX, NANDYAL-11 CIRCLE, D.NO.285/3A AND 25/3B, MSR COMPLEX, NEAR RTC BUS STAND, NANDYAL, ANDHRA PRADESH, -518501.
5. THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI - 110001

...RESPONDENT(S):

Counsel for the Petitioner:

1. PAPUDIPPU SASHIDAR REDDY

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

The Court made the following Order: *(per NJS,J)*

The present Writ Petition is filed seeking to declare the Assessment Proceedings in Form GST DRC-07, dated 29.04.2024 of respondent No.4 and the consequential action in not considering the rectification of the same, as arbitrary and illegal.

2. The petitioner is a registered taxpayer under APGST/CGST Act, 2017. The petitioner has availed Input Tax Credit of Rs.1,88,891/- pertaining to the financial year 2018-19, in three spells i.e., Rs.35,525/- on 04.03.2020; Rs.1,43,019/- on 06.03.2020 and Rs.10,347/- on 07.03.2020. Alleging that the petitioner had irregularly availed Input Tax Credit in contravention of Section 16(4) of the Act read with Section 20 of the IGST Act, inasmuch as the due date for availing Input Tax Credit on invoices pertaining to Financial Year 2018-19 was 20.10.2019 i.e., beyond the date prescribed under the said provisions, issued Form GST DRC-01A dated 24.01.2024 was issued proposing recovery of wrongly availed ITC, interest and penalty. No reply was submitted by the petitioner and did not avail the opportunity of personal hearing on 21.03.2024. Thereafter, respondent No.1 passed an order dated 29.04.2024 directing the petitioner to pay or reverse the Input Tax Credit irregularly availed by the petitioner. Aggrieved by the said order, the present writ petition is filed.

3. Heard Mr. Papudippu Sashidhar Reddy, learned counsel for the petitioner. Also heard Mr.S.A.V.Sai Kumar, learned Assistant Government Pleader for Commercial Tax appearing on behalf of the respondents.

4. Perused the material available on record.

5. 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 in three spells between 04.03.2020 and 07.03.2020 i.e., beyond the time prescribed under the statute.

6. However, during the course of hearing, the counsel for the petitioner submits that in view of the 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 Financial Years 2017-18 to 2020-21. 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 before 30.11.2021 and requested this Court to allow the Writ Petition by setting aside the impugned order.

7. The learned counsel for the respondents, however opposed the said contentions. He argued that in view of the Notification No.22/2024-Central Tax dated 08.10.2024, and procedure laid down therein, the

tax payer/petitioner may apply for rectification of assessment order, within six (6) months from the date of issuance of Notification, as the time line stipulated was not followed, petitioner is not entitled to any relief.

8. We have considered the respective submissions made by the learned counsel on either side. It is not in dispute that by virtue of introduction of Section 16(5) of GST Act, the assessees 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 2018-19 between 04.03.2020 and 07.03.2020 i.e., beyond the cut of date before introduction of Section 16(5). Though arguments were advanced on behalf of the Department with reference to the Notification dated 08.10.2024, the same merits no acceptance. Section 16(5) of the Act is clear and no time limit is stipulated therein. The registered person is entitled to take Input Tax Credit in any return under Section 39 which is filed upto 30.11.2021.

9. Therefore, we are inclined to set aside the impugned order dated 29.04.2024 in view of introduction of Section 16(5) of GST Act, inasmuch as time limit for availing Input Tax Credit was extended to 30.11.2021.

10. Accordingly order dated 29.04.2024 is set aside and Writ Petition is allowed. No costs.

11. Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE NINALA JAYASURYA

JUSTICE T.C.D.SEKHAR

Date:05.10.2026
Ssv

Whether the order is :

Speaking Yes/No / Reasoned Yes/No

Reportable Yes/No / Non-Reportable Yes/No

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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