



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 6841 OF 2026 (T-RES)

BETWEEN:

1. M/S ABE SECURITY MECHANICS PRIVATE LIMITED
2ND FLOOR, 2 KHB BUILDING, 13TH CROSS,
INDIRANAGAR STAGE 2, BANGALORE,
BENGALURU URBAN,
KARNATAKA-560 038.
(GSTIN: 29AAPCA7563C1ZD)
(REPRESENTED BY MADHUKESHWAR YAVAGAL
AGED ABOUT 57)
(GSTIN 29AAPCA 756361ZD)

... PETITIONER

(BY SRI. B. G. CHIDANANDA URS., ADVOCATE)

AND:

1. THE SUPERINTENDENT OF THE CENTRAL AX
DIV-3, GST COMMISSIONERATE
BENGALURU EAST, 3RD FLOOR,
TTMC, BMTC BUS STAND,
OLD AIRPORT ROAD, DOMMALURU,
BENGALURU-560 071.
2. DIRECTOR,
CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS,





GOVERNMENT OF INDIA,
MINISTRY OF FINANCE,
(DEPARTMENT OF REVENUE)
NORTH BLOCK,
NEW DELHI-110 001

3. THE GOODS AND SERVICE TAX COUNCIL,
JANPATH, CONNAUGHT PLACE,
NEW DELHI-110 001
(REPRESENTED BY ITS SPECIAL SECRETARY)

... RESPONDENTS

(BY SRI. ARAVIND V CHAVAN., ADVOCATE FOR R1)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) QUASH THE SHOW CAUSE NOTICE IN SCN NO.50/2023-24/CED3/SUPDT DATED 05.12.2023 ISSUED BY THE RESPONDENT WHICH IS HEREWITH ENCLOSED AS ANNEXURE - A AND ETC.

THIS PETITION COMING ON FOR FRESH MATTERS LIST, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

ORAL ORDER

Sri Aravind Chavan, learned counsel accepts notice for the respondents.

2. The petitioner has challenged the Order-in-Original passed by the respondent Authority at Annexure-'B' dated 22.02.2024 as well as the Show Cause Notice at Annexure-'A' dated 05.12.2023.



3. The petitioner submits that the appeal against such order came to be rejected on the basis of delay in terms of the Order-in-Original at Annexure-'B' without entering into the merits of the matter.

4. It is submitted that the order whereby delayed claim of ITC was rejected requires to be reconsidered in light of amendment made to Section 16 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') by virtue of insertion of sub-clause (5) to Section 16, by virtue of which the assessee would be entitled to claim Input Tax Credit (ITC), if returns are filed before 30.11.2021.

5. It is to be noticed that the Order-in-Original at Annexure-'B' is passed on 22.02.2024 taking note of Section 16(4) of the CGST Act.

6. Sri Aravind Chavan, learned counsel appearing for the respondents submits that the Court may take note



of the legal effect of sub-clause (5) to Section 16 inserted by way of amendment.

7. Perused the impugned Order-in-Original at Annexure-'B' dated 22.02.2024. It is noticed that the respondent Authority has held that the claim for ITC was delayed. The observations made at para 3.2 reads as follows:-

3.2 As per Notification No.19/2019-Central Tax dated 22-04-2019, the due date for filing the GSTR-3B return for the month of March, 2019 was extended to 23rd April, 2019 from 20th April, 2019, hence the last date for availing the ITC for the year 2017-18 is 23rd April, 2019, if the annual return for the year 2017-18 is not filed prior to 23rd April, 2019. If the annual return (GSTR-9) is filed prior to 23rd April, 2019 the last date for availing ITC will be such date on which the annual return for 2017-18 is filed. In the present case, the GSTR-3B returns for the period 2018-2019 were filed by the noticee after 23rd April 2019 and as such the ITC amounting to Rs.509467/ (IGST:RS.2,22,879/-, CGST:Rs.1,43,294/-, SGST: Rs.1,43,294/-) availed for the said period has to be treated as ineligible ITC, as per Table below:-



<i>Date of Filing</i>	<i>Month</i>	<i>IGST</i>	<i>CGST</i>	<i>SGST</i>
19-08-2019	Jun-18	21,574	32,887	32,887
19-09-2019	Jul-18	4,046	17,873	17,873
15-11-2019	Aug-18	866	5,587	5,587
15-11-2019	Sep-18	31,344	5,580	5,580
15-11-2019	Oct-18	40,066	16,848	16,848
16-11-2019	Nov-18	98,402	11,120	11,120
16-11-2019	Dec-18	595	4,708	4,708
16-11-2019	Jan-19	6,036	29,263	29,263
16-11-2019	Feb-19	3,365	6,705	6,705
30-09-2020	Mar-19	16,645	12,723	12,723
	Total	2,22,879	1,43,294	1,43,294

8. It is to be noticed that amendment to Section 16(5) starts with a *non-obstante* clause. Section 16(5) reads as follows:-

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

(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 upto the thirtieth day of November, 2021."



9. The observations made in the order dated 11.03.2026 passed in W.P. No.6883/2026 at paras-4 to 6 are extracted hereinbelow:-

"4. Perused the Order-in-Original and Order-in-Appeal. The only ground on which steps were taken to deny ITC claim is that it was claimed beyond the period prescribed under Section 16(4). Section 16(4) and Section 16(5) of the CGST Act reads as hereunder:

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

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

(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 upto the thirtieth day of November, 2021."



5. *It is pertinent to note that the Central Board of Indirect Taxes and Customs vide Circular No. 237/31/2024-GST dated 15.10.2024, issued to all Principal Chief Commissioners/Chief Commissioners/ principal Commissioners/ Commissioners of Central Tax (All) and Principal Director General/Directors General (All) has clarified the issues regarding implementation of provisions of sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017. The Circular clarifies that sub-section (5) of Section 16 has been inserted retrospectively with effect from 01.07.2017 vide Finance (No.2) Act, 2024, thereby overriding the earlier time restriction prescribed under sub-section (4) of Section 16 in respect of the financial years 2017-18, 2018-19, 2019-20 and 2020-21. Sub-section (5) to Section 16 was inserted by the Finance (No.2) Act, 2024, with retrospective effect from 01.01.2017. In pursuant thereof, the Ministry of Finance (Department of Revenue) Central Board of Indirect Taxes and Customs, issued Notification No.17/2024-Central Tax, dated 27.09.2024, followed by Circular No. 237/31/2024-GST dated 15.10.2024 providing clarification regarding the implementation of the said provision. The aforesaid legislative development by insertion of sub-section (5) to Section 16 through Finance (No.2) Act 2024, read with the*



clarification, affirms that claims of Input Tax Credit (ITC) availed through GSTR-3B returns filed up to 30th November 2021 shall be permissible. The relevant extract is reproduced hereunder:

"Reference is invited to sub-section (5) and sub-section (6) of section 16 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") inserted in section 16 of the CGST Act, with effect from the 1st day of July, 2017, vide section 118 of the Finance (No. 2) Act, 2024, whereby the time limit to avail input tax credit under provisions of sub-section (4) of section 16 of CGST Act has been retrospectively extended in certain specified cases."

6. It must be noticed that Section 16(5) was inserted by way of an amendment by Finance Act (No.2), 2024. The said clause is a non-obstante clause, as it states, "notwithstanding anything contained in sub-section (4)". If that were to be so, in light of the petitioner having claimed ITC with respect to the financial year 2018-19, by virtue of Section 16(5), petitioner's entitlement would be extended till 30.11.2021, whereas the return of the petitioner was filed on 28.10.2019. The return filed is within the extended time prescribed under Section 16(5)."



10. In light of the provision starting with a *non-obstante* clause, it could be construed that the provision would enable the claim of ITC, if the returns are filed with respect to the years mentioned in sub-section (5) of Section 16 before 30.11.2021. In the present case, the claim of ITC relates to the year 2019-2020. If that were to be so, if the returns were filed before 30.11.2021, the petitioner is eligible for claim of ITC. In the present case, the returns were filed on 30.09.2020. If that were to be so, the claim of the petitioner regarding ITC requires to be taken note of and the matter is to be re-adjudicated.

11. In light of appeal having been dismissed only on the ground of delay, the Court can enter into the merits of the impugned order. Accordingly, the validity of the Order-in-Original at Annexure - 'B' dated 22.02.2024 is interfered with.

12. Accordingly, the Order-in-Original at Annexure-'B' dated 22.02.2024 as well as the show cause



notice at Annexure-'A' dated 05.12.2023 are set aside. The matter is remitted to respondent No.1 for reconsideration in light of the observations made hereinabove and also the observations made in the order dated 11.03.2026 passed in W.P.No.6883/2026.

13. In light of the fact that the petitioner has filed the returns within the time stipulated, the petitioner would be entitled for claim of ITC and the respondent Authority may consider the same and re-adjudicate the matter as per law. All other contentions are kept open.

Subject to the above observations and directions, the petition is ***disposed of.***

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

VGR