

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

The Hon'ble Mr. Justice T.S.SIVAGNANAM

W.P.No.23860 of 2017

and

WMP.Nos.25091 and 25092 of 2017

Oceanic Tropical Fruits Private Limited
Represented by its Manager(Accounts)
M.Ezhumalai
#6, First Floor, Wellington Estate Complex
#53, Ethiraj Salai,
Egmore, Chennai - 600 006. ...Petitioner

Vs

- 1.The Assistant Commissioner (TRC),
Office of the Commissioner of Central Excise,
Puducherry Commissionerate,
1,Goubert Avenue,
Puducherry - 605 001.
- 2.The Assistant Commissioner of GST
and Central Excise,
Office of the Assistant Commissioner
of Central Excise,
Solai Nagar, Sudhaakar Nagar,
Villupuram - 605 602.
- 3.The Superintendent of GST and
Central Excise (Maduranthakam-Range I),
Office of the Superintendent of GST
and Central Excise,
Range -I, Maduranthakam,
No:64, Alagesan Nagar,
Chengalpet - 603 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the Notice O.C.No.144/2017, dated 12.07.2017, issued by the Superintendent of GST and Central Excise (Maduranthakam -Range I), the 3rd respondent herein, and to quash the same as arbitrary and unlawful, being violative of rules and principles of natural

justice and thereby to direct the respondents to restore the arrear payment facility.

For Petitioner : Mr.N.Surya Senthil

For Respondents: Mr.V.Sundareswaran
Senior Panel Counsel

O R D E R

Heard Mr.N.Surya Senthil, the learned counsel appearing for the petitioner and Mr.V.Sundareswaran, the learned Senior Panel Counsel appearing for the respondents.

2. The petitioner has filed this Writ Petition, challenging the notice issued by the third respondent, dated 12.07.2017, stating that the petitioner is liable to pay a sum of Rs.64.62 lakhs, whereas, they paid only 20.18 lakhs, and also defaulted the regular duty amount of Rs.70.68 lakhs from April to June 2017. Therefore, the petitioner was informed that, action will be initiated against them under Section 11 of the Central Excise Act, 1944.

3. When this Writ Petition came up for hearing, this Court granted an interim order on 07.09.2017, directing the petitioner to show their bona fides by paying a sum of Rs.43.08 lakhs in two instalments on or before 22.9.2017, and the said interim order reads as follows :-

" Heard the learned counsel for the petitioner and Mr.V.Sundareswaran, learned Senior Panel Counsel accepting notice for the respondents.

2.The petitioner is aggrieved by the garnishee notice issued by the third respondent for recovery of the arrears of central excise duty.

3.The first respondent was magnanimous enough to grant permission to the petitioner to pay the arrears in 18 equal monthly instalments of Rs.21.54 lakhs each. However, the petitioner has now paid only four instalments and defaulted in payment of the fifth instalment, which necessitated the third respondent to pass the impugned garnishee notice.

4.The learned counsel for the petitioner submits that due to financial difficulty, the petitioner could not honour the commitment, but now they are ready and willing to pay the monthly instalments promptly and that some reasonable time may be granted.

5.To show the bona fides, the petitioner shall pay two instalments namely Rs.43.08 lakhs (Rupees forty three lakhs and eight thousand only) (Rs.21.54 lakhs + Rs.21.54 lakhs) on or before 22.9.2017. Subject to compliance of the above condition, there will be an interim order as prayed for. It is needless to state that the petitioner shall not commit any default in payment of future instalments. List on 05.10.2017 for further directions."

4. The learned counsel appearing for the petitioner submits that the first instalments of Rs.21.54 lakhs was paid on 11.09.2017, and even before the petitioner could take steps to pay the second installment before 22.9.2017, one of the secured creditors, who had lent monies to the petitioner, viz. ICICI Bank had moved the National Company Law Tribunal (Division Bench) Chennai (NCLT) by filing CP/564(IB)/CB/2017, under Section 7 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016, and the NCLT has passed an order on 13.9.2017, appointing Mr.C.Ramasubramaniam, Insolvency Resolution Professional (IRP) as proposed by the Financial Creditor, and issued other directions to the said IRP.

5. In the light of the above development, the petitioner can no longer maintain the present Writ Petition. Accordingly the Writ Petition stands dismissed. It is open to the respondent/Department to initiate appropriate proceedings for recovery of the dues in accordance with rules. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

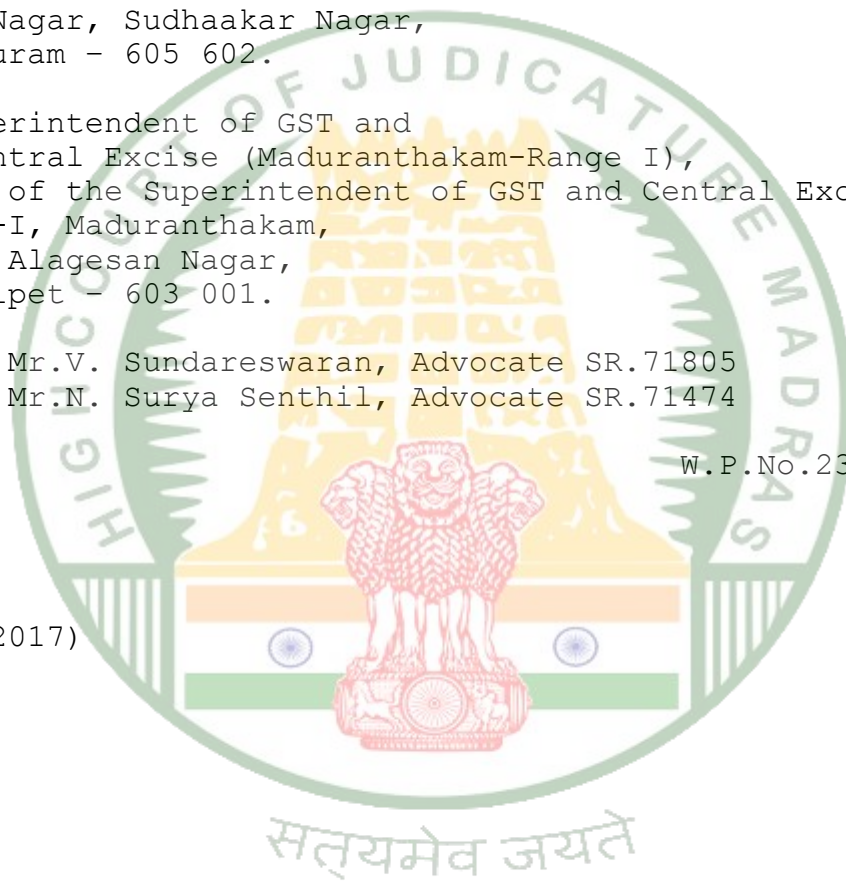
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To

- 1.The Assistant Commissioner (TRC),
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Range -I, Maduranthakam,
No:64, Alagesan Nagar,
Chengalpet - 603 001.
- + 1 cc to Mr.V. Sundareswaran, Advocate SR.71805
+ 1 cc to Mr.N. Surya Senthil, Advocate SR.71474

W.P.No.23860 of 2017

MR(CO)
EU(13/11/2017)



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