IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **08.12.2022**

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.6616 of 2020
&
W.M.P.No. 7843 of 2020

M/s.Senthilmurugan Natesan
Rep. By its Proprietor Senthilmurugan Natesan
No.67-A, Needarajapayer Street
Puducherry – 605 001 .. Petitioner

Vs.

1. The Assistant Commissioner of CGST & Central Excises
Puducherry Division-1, No.14, Municipal Street
Azeez Nagar, Reddiarpalayam, Puducherry – 605 010

2. The Superintendent of CGST & Central Excises
Puducherry Division-1, No.14, Municipal Street
Azeez Nagar, Reddiarpalayam, Puducherry – 605 010

3. The Branch Manager
Union Bank of India
No.47, Jawaharlal Nehru St.
Puducherry – 605 001 ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the impugned notice in FORM GST DRC-13 in C.No.IV/16/10/2019-Misc TRC dated 22.01.2020 issued by the 1st

Respondent and quash the same as illegal, arbitrary in violation of principles of natural justice and directions to the first respondent to issue revised notice afresh after considering the records within such time as may be directed by this Court.

For Petitioner : Ms.Abbiraami
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
for Customs and GST
along with Mr.K.S.Ramaswamy
Junior Panel Counsel
For R1 and R2

ORDER

This common order will now dispose of the captioned main writ petition and captioned 'WMP' ['Writ Miscellaneous Petition'] thereat.

2. It is not necessary to be detained by facts by dilating and delving into granular details as Ms.Abbiraami, learned counsel for writ petitioner-assessee and Mr.A.P.Srinivas, learned Senior Standing Counsel along with Mr.K.S.Ramaswamy, learned Junior Panel Counsel for respondents 1 and 2 very fairly submit in unison, in one voice that the captioned matter is directly and squarely covered by orders dated 19.12.2019 in W.A.Nos.2127 and 2151 of 2019. Therefore, in terms of short facts it will suffice to say that the captioned matter pertains to interest on delayed payment vide Section 50(1) of 'Central Goods and

Services Act, 2017' (hereinafter 'CGST Act' for brevity).

3. As regards aforementioned orders in W.A.Nos.2127 and 2151 of 2019, there is no disputation that this Court disposed of W.P.No.15624 of 2019 by order dated 13.06.2019, that order was carried in appeal by the Revenue vide aforementioned writ appeals, two Hon'ble Judges constituting the Division Bench took divergent views, the matter was referred to a third Hon'ble Judge and third Hon'ble Judge by order dated 19.12.2019 concurred with the views of one of the Hon'ble judges of the Division Bench who sustained 13.06.2019 order in W.P.No.15624 of 2019.

4. Learned counsel on both sides submit that an order akin to the operative portion in W.P.No.15624 of 2019 will serve the purpose of both sides. This operative portion has been extracted in the aforementioned order of Hon'ble third Judge in paragraph 8 and the same reads as follows:

> '*8. The Writ Court disposed W.P.No.15624 of 2019 on 13.06.2019 wherein the operative portion at paragraph 16 reads as follows:*
>
> *16. In the light of narrative thus far, the following order is passed:*
>
> *a) Writ petitioner undertakes to pay the admitted*

liability of Rs.229,014,673/- (as admitted in petitioner's aforementioned letter dated 29.03.2019 to the Department within one week from today i.e., on or before 20.06.2019).

b) On payment of aforesaid amount on or before 20.06.2019, the impugned communication dated 23.05.2019 bearing reference C.No.IV/16/30/2019-Tech-III from the second respondent to the third respondent bank will stand set aside.

c) If the aforesaid payment is not made on or before 20.06.2019, this writ petition will stand dismissed and the impugned order will continue to operate without any reference to this Court.

d) On payment of aforesaid amount on or before 20.06.2019 by the writ petitioner, as mentioned supra, impugned communication from the second respondent to third respondent bank inter-alia under Section 79 of CGST Act will stand set aside and the second respondent shall consider all the points raised in writ petitioner's reply dated 29.03.2019, more particularly the annexed working sheet, pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom.

e) If the decision taken by the second respondent is in favour of the writ petitioner, it is the end of the matter. If that not be so, as mentioned supra, writ petitioner shall avail alternate remedy of preferring a statutory appeal to the appellate Authority under Section 107 of CGST Act.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.'

5. In the case on hand, Revenue has pegged interest at Rs.4,55,027/- and according to the petitioner-assessee first respondent has taken the total tax due for the sales without considering the Input Tax Credit.

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6. It is to be noted that the interest has to be levied only for the amount that remains unpaid is learned writ petitioner counsel's say but learned Revenue Counsel says that this needs to be verified qua records.

7. In this view of the matter, the following order is passed:

a) Writ petitioner to demonstrate to the satisfaction of Respondents 1 and 2 undisputed payments (if any) within three weeks from today i.e., on or before 29.12.2022.

b) On demonstration to the satisfaction of respondents 1 and 2 (as above), the impugned notice will stand set aside;

c) If the aforesaid demonstration is not made on or before 29.12.2022, the writ petition will stand dismissed and the impugned order and notice will continue to operate without any reference to this Court;

d) On demonstration in the aforesaid manner on or before 29.12.2022 by the writ petitioner/assessee as mentioned supra, first respondent and/or second respondent shall consider the stand of the writ petitioner and pass an order in a manner known to law and communicate the same to the writ petitioner under due acknowledgement within one week therefrom;

e) If the decision taken by the first respondent and/or second respondent is in favour of the writ petitioner, it is the end of the matter. If that not be so, writ petitioner shall avail alternate remedy of statutory appeal to the Appellate Authority under Section 107 of CGST Act.

Captioned writ petition stands disposed of with the above directives. There shall be no order as to costs. Consequently, WMP is disposed of as closed. There shall be no order as to costs.

08.12.2022

Index: yes/no
gpa

To

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