IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.32973 of 2022
and W.M.P.No.32374 of 2022

M.Arul Kumaran,
Chairman & Managing Director,
M/s.Royal Meridian Impex India Private Limited,
New No.100, Old No.4,
South West Boag Road,
V.Nagar, Chennai 600 017.

.. Petitioner

Vs.

1.The Joint Commissioner,
O/o.The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.692, M.H.U. Complex, Nandanam,
Chennai 600 035.

2.The Deputy Commissioner of GST & Central Excise,
H.Qrs. Preventive,
Chennai South Commissionerate,
Chennai.

3.The Deputy Commissioner of GST & Central Excise,
T.Nagar Division,
Chennai South Commissionerate,
Chennai.

4.The Range Superintendent of GST & CE,
Range V, T.Nagar Division,
T.Nagar, Chennai.

5.The Sub-Registrar,
Sub-Registrar Office,
7th Main Road,
Jameen Pallavaram,
Chennai 600 044.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent in Ref.C.No.IV/16/44/2019-HPU GST (Gr-II), dated 04.11.2019 and quash the same and release the attachment.

For Petitioner	:	Mr.K.Anandharaja, of M/s.Murali Law Firm
For Respondent	:	Mr.Sai Srujan Tayi, Senior standing counsel (GST) along with Ms.Sonu Mehtha, for R1 to R4 Mr.S.Ravikumar, Special Government Pleader, for R5.

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O R D E R

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

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 08.12.2022, which reads as follows:

'Mr.K.Anandharaja, of M/s.Murali Law Firm (Law Firm) (counsel on record for writ petitioner) who is before this Court submits that the captioned writ petition pertains to provisional attachment of a immovable property of two directors of one 'Royal Meridian Impex India Private Limited' [hereinafter 'Assessee company' for the sake of brevity]. To be noted, provisional attachment is under Rule 159 of 'the Central Goods and Services Tax Rules, 2017' [hereinafter 'C-GST Rules' for the sake of convenience and clarity] being Rules under 'the Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017)' [hereinafter 'C-GST Act' for the sake of convenience and clarity] for allegedly

having wrongfully availed 'Input Tax Credit' ['ITC' for the sake of brevity] qua Section 74 of C-GST Act. Learned counsel submits that post provisional attachment order being 'order dated 04.11.2019 bearing reference C.No.IV/16/44/2019-HPU GST (Gr II)' [hereinafter 'impugned order' for the sake of convenience and clarity] the petitioner or other co-director did not object to the same immediately but sent a communication on 03.03.2020 and followed it up with further communications in 2021. Notwithstanding very many averments in the support affidavit, learned counsel for writ petitioner makes one pointed submission in his challenge to the impugned order and that submission is predicated on sub-section (2) of Section 83 of C-GST Act which reads as follows:

> *'83. Provisional attachment to protect revenue in certain cases -*
>
> *(1) ....*
>
> *(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).'*

2. Learned counsel submits that the impugned order is dated 04.11.2019 and one year therefrom elapsed on 04.11.2020 and therefore, the impugned order ceases to have effect by operation of law i.e., aforementioned sub-section (2) of Section 83 of C-GST Act. To be noted, Section 89 of C-

GST Act captioned 'Liability of directors of private company' provides for attachment of property of directors of a company when the company is an assessee. This is recorded only for completing facts.

3. This Court is of the view that prima facie case has been made out.

4. Be that as it may, with the intention of expediting disposal instead of issuing Rule Nisi, this Court has taken the course of permitting Mr.Sai Srujan Tayi, learned Senior standing counsel for GST assisted by Ms.Sonu Mehtha, to accept notice on behalf of respondents 1 to 4. Mr.S.Ravikumar, learned Special Government Pleader accepts notice for fifth respondent.

5. Learned Revenue counsel requests for a short accommodation to get instructions and revert to this Court. Request acceded to.

6. <u>In the next listing, Registry to show the name of learned Revenue counsel in the cause list. List in the Motion List on 15.12.2022.'</u>

3. Today, Mr.K.Anandharaja learned counsel of M/s.Murali Law

Firm (Law Firm) for sole writ petitioner, Mr.Sai Srujan Tayi, learned Revenue counsel for respondents 1 to 4 and Mr.S.Ravikumar, learned State counsel (Special Government Pleader) for 5th respondent are before this Court. To be noted, the 5th respondent is only a formal party as far as these proceedings are concerned.

4. Adverting to earlier proceedings made in the previous listing on 08.12.2022, learned Revenue counsel submits that Section 74 proceedings has since culminated in an order dated 19.05.2022 and writ petitioner has preferred an appeal i.e., Statutory appeal under Section 107 of 'Central Goods and Services Tax Act, 2017 (Central Act 12 of 2017)' [hereinafter 'C-GST Act' for the sake of convenience and clarity]. Learned counsel for writ petitioner enters upon a disputation qua this submission. It may really not be necessary to go into this disputation owing to the limited perimeter of the captioned matter. Captioned matter pertains to whether the provisional attachment has ceased as one year from the date of the order had elapsed. There is no disputation or contestation that the provisional attachment is dated 04.11.2019 and one

year therefrom elapsed on 04.11.2020. Therefore by operation of law i.e., sub-section (2) of Section 83 of C-GST Act, provisional attachment which has been assailed in the captioned writ petition has ceased to have effect. Therefore the impugned order which has been assailed has already perished by operation of Statute. This means that acceding to the prayer in captioned writ petition is only stating the obvious i.e., stating the obtaining legal consequence of operation of Statute.

5. Therefore, this position is reiterated and it is made clear that the impugned order has ceased to have effect on and from 04.11.2020. This answers the writ petition. As regards the Section 74 proceedings if any, this order will neither impede nor serve as an impetus to the same.

6. Captioned writ petition is disposed of as closed on above terms. Consequently, captioned WMP is also disposed of as closed. There shall be no order as to costs.

21.12.2022
(2/2)

Index: Yes/No

Speaking / Non-speaking order
nsa/kmi

To

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M.SUNDAR, J.,

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