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W.P.Nos.6097 and 6098 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.6097 and 6098 of 2020

and

W.M.P. Nos.7159, 7161 and 7167 of 2020

M/s.Voltech O and M Services Private Ltd.,
2/429, Volrech Eco Tower,
Mount Poonamallee Road,
Ayyappanthangal,
Chennai - 600 056.

.. Petitioner
in both W.P.s

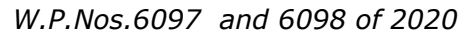
vs

1. Superintendent of GST and Central Excise,
Poonamallee - II Range,
No.42, Trunk Road,
Poonamallee,
Chennai - 600 056.

2. Assistant Commissioner (Central Tax),
Poonamallee Division,
Chennai Outer Commissionerate,
The Department of GST & Central Excise,
TNHB Complex,
Anna Nagar,
Chennai - 600 040.

3. Branch Manager,
State Bank of India,
Jawaharlal Nehru Road,
Ekkaduthangal,
Chennai - 600 097.

... Respondents in
both W.P.s



Prayer in W.P. No.6098 of 2020 : Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari, to call for the records pertaining to the impugned demand dated 22.01.2020 issued by the First Respondent in O.C. No.8 of 2020 and quash the same.

COMMON ORDER

2. W.P. No.6098 of 2020 has been filed challenging the impugned notice dated 15.07.2019 issued by the 1st respondent in O.C. No.142 of 2019.

3. Subsequently, bank attachment notices dated 12.02.2020 under the provisions of Section 79(1) (c) of the CGST Act, 2017 have been issued by the 2nd respondent.

4. As per the impugned demand, dated 22.01.2020, the petitioner has been directed to pay interest amounting to Rs.55,16,274/-, within one



W.P.Nos.6097 and 6098 of 2020

week under intimation to the office of the 1st respondent through FORM

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5. The petitioner claims that they are not liable to pay any interest as per the impugned demand on the ground that only in respect of the cash component mentioned in the impugned demand dated 22.01.2020, they are liable to pay interest. But according to them, insofar as the credit component is concerned, they are not liable to pay any interest.

6. The issue as to whether an assessee is liable to pay any interest for the alleged non payment of the credit component is covered by the decisions of two learned Judges of this Court in the case of a) ***M/s.Sri Priyanga Agencies, vs. The Assistant Commissioner of CGST & Central Excise and two others***, dated 08.12.2022 rendered in W.P. No.6603 of 2020 and the order, dated 06.01.2020 passed in W.P. Nos.23360 and 23361 of 2019 in the case of b) ***M/s.Refex Industries Limited vs. The Assistant Commissioner of CGST & Central Excise and two others***, wherein they have interpreted and explained Section 50(1) of the GST Act, 2017.

7. The learned judges have held in clear terms that Section 50 of the GST Act can be applied demanding interest only in cases of belated



W.P.Nos.6097 and 6098 of 2020

cash payment towards GST, but not on input tax credit available all the while with the department to the credit of the assessee.

8. This Court is in agreement with the view taken by the two learned Judges of this Court in the aforementioned decisions. Accordingly, similar directions are issued in these writ petitions also and they are as follows :-

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 28.02.2023;

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 28.02.2023, the writ petition will stand dismissed and the impugned notice will continue to operate without any reference to this Court;

d) On demonstration in the aforesaid manner on or before 28.02.2023 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



W.P.Nos.6097 and 6098 of 2020

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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.

f) in addition to the aforementioned directions, since the bank account of the petitioner has been attached, in the event of the petitioner paying interest in respect of the cash component as estimated by the respondent pursuant to the aforementioned determination, the consequential order of attachment dated 12.02.2020 is directed to be raised by the 3rd respondent bank.

9. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2023

Index: Yes/No

Neutral Citation: Yes/No

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W.P.Nos.6097 and 6098 of 2020

ABDUL QUDDHOSE, J.

vsi2

To

1. The Superintendent of GST and Central Excise,
Poonamallee - II Range,
No.42, Trunk Road,
Poonamallee,
Chennai - 600 056.

2. The Assistant Commissioner (Central Tax),
Poonamallee Division,
Chennai Outer Commissionerate,
The Department of GST & Central Excise,
TNHB Complex,
Anna Nagar,
Chennai - 600 040.

3. The Branch Manager,
State Bank of India,
Jawaharlal Nehru Road,
Ekkaduthangal,
Chennai - 600 097.

W.P. Nos.6097 and 6098 of 2020

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