# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.19583 of 2023
and
W.M.P.Nos.18844 and 18845 of 2023

M/s.Nithya Packaging Private Limited,
Represented by its Authorized Signatory
Mr.A.Sivakumar,
No.48, 3rd Cross Street,
Anandarangapillai Nagar,
Puducherry - 605 008. ... Petitioner

Vs.

1.The Assistant Commissioner of GST
and Central Excise,
Puducherry III Division,
No.14, Municipal Street,
Azeez Nagar, Reddiarpalayam,
Puducherry - 605 010.

2.The Superintendent of Central Tax
and Central Excise,
Office of the Commissioner of Central Tax
and Central Excise,
Audit-I Commissionerate,
No.1775, Jawarharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai - 600 101.

3.The Superintendent of GST
and Central Excise,
Range-III-B, Division-III of CGST
Puducherry Commissionerate,
2nd Floor, RS 48/1, Azeez Nagar,
Reddiarpalayam,
Puducherry - 605 010.

4.The Assistant Commissioner of GST
and Central Excise,
Office of the Commissioner of GST
and Central Excise,
Audit-I Commissionerate,
1775, Jawarharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai - 600 101. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the impugned Order-in-Original No.3/2023 (GST) passed by the first respondent in C.No.ADJ/GST/122/2022-CGST-DIV-III-COMMRTE-PUDUCHERRY DIN-20230359XQ0000333CF2 dated 28.03.2023 and the "Summary of the order" passed in Form GST DRC-07 in ZD340423001374Y dated 18.04.2023 and quash both the proceedings as passed contrary to law and opposed to the principles of natural justice.

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|---|---|---|
| For Petitioner | : | Mr.P.Rajkumar |
| For Respondents | : | Mr.Sai Srijan Tayi<br>Senior Standing Counsel |

**ORDER**

Mr.Sai Srijan Tayi, learned Senior Standing Counsel takes notice on behalf of the respondents.

2. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

3. The petitioner had difficulty in transitioning Input Tax Credit on capital goods at the time when GST was implemented with effect from 01.07.2017. The petitioner has communicated with the Department and the officials named in the Web Portal. However, he is unable to transfer the transitional credit properly. Thereafter, the petitioner appears to have taken a decision to avail Input Tax Credit, which the petitioner could not transition under Section 140 of the Central Goods and Services Tax Act, 2017. This was also confirmed by a Sanction Order (Tran-1 Credit) dated 20.02.2023. Meanwhile, the proceedings were initiated to recover the amounts from the petitioner, which has culminated in the impugned order.

4. By the impugned order dated 28.03.2023, the first respondent has imposed penalty and interest on the petitioner under Section 50 and Section 73(9) read with Section 122(2)(a) of the CGST Act. The dispute has arisen on account of the fact that the petitioner has filed a revised return in terms of the decision of the decision of the Bombay High Court in **Chep India Private Limited** Vs **Union of India and others** in W.P.No.1075 of 2021 dated 27.06.2022 and the decision of the Hon'ble Supreme Court in **Union of India and another** Vs **FILCO Trade Centre Private Limited and another** in SLA(C)Nos.32709 and 32710 of 2018, dated 22.07.2022, claiming Input Tax Credit, which was earlier sanctioned to the petitioner by a Sanction Order (Tran-1 Credit) dated 20.02.2023.

5. The only point that arises for consideration is whether the petitioner can be mulcted with the interest and penalty even though the credit which was taken has been sanctioned and merely because the petitioner had also filed returns to transition the same credit.

6. The learned Senior Standing Counsel for the respondents would submit that the matter can be agitated by the petitioner before the Appellate

Commissioner as to whether the petitioner will be liable to pay interest and penalty under Section 50 and Section 73(9) read with Section 122 (2) (a) of the CGST Act.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

8. Though the petitioner has an alternate remedy before the Appellate Commissioner, there is no disputing facts that the petitioner is entitled to Rs.11,06,396/- on the eve of implementation of GST with effect from 01.07.2017. By the Sanction Order (Tran-1 Credit) dated 20.02.2023, the Superintendent of GST and Central Excise, Range-IIIB, Puducherry has confirmed that the petitioner is entitled to the aforesaid transitional credit.

9. Therefore, merely because the petitioner had filed subsequent return and had given up the same would not mean that the petitioner can be subjected to pay interest and penalty.

10. The difficulty arose only on account of technical glitches in the web portal maintained by the Central Government at the time of implementation of GST. The petitioner cannot be penalized as the credit itself was allowed after the implementation of GST by Sanction Order (Tran-1 Credit) dated 20.02.2023.

11. I find sufficient grounds to interfere with the impugned order. The impugned order seeking to impose interest and penalty on the petitioner is unsustainable. Therefore, the impugned order is liable to be quashed. Accordingly, it is quashed.

12. Thus, this Writ Petition stands allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

**03.07.2023**

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

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**C.SARAVANAN, J.**

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