IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **03.01.2023**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.35115 of 2022
&
W.M.P.No.34583 of 2022
in
W.P.No.35115 of 2022

M/s.New Grace Automech Products Pvt. Ltd.,
Rep. By its Managing Director Mr.N.Kumar
SF No.826/6, Bharathiyar Nagar
Avalapalli Raod, Hosur
Krishnagiri District – 635 109 .. Petitioner

Vs.

State Tax Officer
The office of the Assistant Commissioner (ST)
Hosur (North)-2 Circle
Hosur, Krishnagiri District – 635 109 ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in DRC-07 dated 07.02.2022 in GSTIN33AADCN9343B1ZR/2017-18, 2018-2019 and 2019-2020 respectively and to quash the same.

For Petitioner : Mr.B.Thirumalai

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Taxes)

O R D E R

Mr.B.Thirumalai, learned counsel on record for writ petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) who accepted notice on behalf of lone respondent are before this Writ Court.

2. Owing to the narrow scope of the captioned writ petition, with the consent of learned counsel on both sides, main writ petition was taken up and heard out.

3. Writ petitioner has challenged an 'order dated 07.02.2022 bearing reference ZD330222000916X' [hereinafter 'impugned order' for the sake of convenience and clarity] making certain tax demands qua 'Tamil Nadu Goods and Services Tax Act, 2017' [hereinafter 'TN-G & ST Act' for the sake of brevity and convenience].

4. Notwithstanding very many averments in the writ affidavit, the lone point that is canvassed by the learned counsel for writ petitioner is, the impugned order has not been served on the writ petitioner by resorting to the method of service set out in Section 169 (1)(b) of TN-G&ST Act.

5. Learned counsel for writ petitioner adverting to Section 169 (1)(b) of TN-G&ST Act submitted that it is imperative that the impugned

order is served on the writ petitioner through registered post or speed post or courier with acknowledgement due at the writ petitioner's last known address of business or residence.

6. Responding to the aforementioned lone point on which captioned writ petition is predicated, learned Revenue counsel drew the attention of this Court to Section 169 (1)(d) of TN-G&ST Act which provides for service by making available the order in the common portal. This writ Court deems it appropriate to extract and reproduce Section Section 169(1)(b) and (d) of TN-G&ST Act which reads as follows:

> *'169. **Service of notice in certain circumstances**-*
>
> *(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by nay one of the following methods, namely:-*
>
> *(a) .....*
>
> *(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or*
>
> *(c) .....*
>
> *(d)by making it available on the common portal; or*
>
> *(e) ....*
>
> *(f).....*
>
> *(2).....*
>
> *(3).....'*

7. A careful perusal of language in which Section 169 is couched makes it clear that methods of service adumbrated therein are not conjunctive but are alternate methods of service. The reason is, the language in which sub-section (1) is couched makes it clear that service shall be by one of the methods adumbrated therein. To be noted as many as six methods (a) to (f) have been adumbrated therein.

8. Learned Revenue counsel further submits on instructions that the impugned order was uploaded or in other words made available in the common portal on the same day i.e., 07.02.2022. There is no disputation or contestation on this submission made on instructions. This by itself drops the curtains on the captioned writ petition.

9. Be that as it may, though not averred in the writ affidavit, learned counsel for writ petitioner submits that writ petitioner attempted to prefer an appeal against the impugned order to the Appellate Authority by way of a statutory appeal under Section 107 of TN-G&ST Act and the appeal is not being entertained. Absent averments and absent material in the case file before this Court, this Court does not want to make forays into these territories. Suffice to say that an appeal under Section 107 is subject to a 'prescribed period of limitation' and a 'condonable period of

limitation' i.e., three months and one month respectively. It is also circumscribed by a pre-deposit condition. If the writ petitioner is able to satisfy the Appellate Authority qua limitation and pre-deposit, it is open to the Appellate Authority to consider the appeal on its own merits and in accordance with law.

11. Be that as it may, there is no ground to interfere qua impugned order in the captioned writ petition. Sequitur is captioned writ petition fails and the same is dismissed. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

03.01.2023
(½)

Neutral Citation: Yes/No
Index: yes/no
gpa

To

The State Tax Officer
The office of the Assistant Commissioner (ST)
Hosur (North)-2 Circle
Hosur, Krishnagiri District – 635 109

M.SUNDAR, J.,

gpa

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