IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2023

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**

W.P.Nos.293 & 294 of 2023

M/s.Suzlon Energy Ltd.,
R.S.No.59, Thiruvandarkoil,
Mannadipet Commune,
Puducherry-605 102.
Rep. By its Authorised Signatory

... Petitioner in both WPs.

-Vs.-

1. The Commercial Tax Officer-IAC,
   Goods Division-III, Commercial Tax Department,
   100 Feet Road, Ellaipillaichavadi,
   Sithananda Nagar, Thanthai Periya Nagar,
   Puducherry-605 005.
2. The Assistant Commissioner (Appeal),
   Commissioner Taxes Department,
   100 Feet Road, Ellaipillaichavadi,
   Sithananda Nagar, Thanthai Periya Nagar,
   Puducherry-605 005.
3. The Commissioner (ST),
   Commercial Tax Department,
   100 Feet Road, Ellaipillaichavadi,
   Sithananda Nagar, Thanthai Periya Nagar,
   Puducherry-605 005.

... Respondents in both WPs

Prayer in WP.293/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to dispose of the petitioner's Representation dated 14.11.2022 giving effect to the Order dated 22.07.2022 in Appeal No.23/GST/2020-21 passed by the 2nd respondent along with applicable interest.

Prayer in WP.294/2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to dispose of the petitioner's Representation dated 14.11.2022 giving effect to the Order dated 28.07.2022 in Appeal No.24/GST/2020-21 passed by the 2nd respondent along with applicable interest.

For Petitioner in both WPs.	: Mr.Raghavan Ramabadran of M/s.Lakshmi Kumaran and Sridharan Attorneys (Law Firm)
For Respondents in both WPs.	: Mr.J.Kumaran Additional Government Pleader (Puducherry)

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COMMON ORDER

This common order will now govern the captioned two writ petitions.

2. Captioned two writ petitions are in the Admission Board before this Writ Court. Mr.Raghavan Ramabadran of M/s.Lakshmi Kumaran and Sridharan Attorneys [Law Firm] on behalf of writ petitioner-Company [to be noted, writ petitioner-Company is the same in both captioned writ petitions] is before this Court and Mr.J.Kumaran, learned Additional Government Pleader

[Puducherry] who has accepted notice on behalf of all the three respondents in both the writ petitions is also before this Writ Court.

3. Captioned writ petitions arise under 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-G & ST Act' for the sake of brevity, convenience and clarity] and it pertains to Refund of accumulated 'ITC' ['Input Tax Credit'] which (in the case on hand) is a product of what is referred to in Revenue Bar parlance as 'inverted tax structure'. Owing to the limited perimeter within which captioned writ petitions perambulate, with the consent of learned counsel on both sides, main writ petitions were taken up and heard out.

4. Short facts [shorn of elaboration and granular particulars] would suffice. Factual matrix in a nutshell is that writ petitioner is a manufacturer and supplier of Wind Operated Electricity Generators and its parts; that with regard to one of the parts so supplied by writ petitioner, inputs procured by writ petitioner were higher than the tax rate on the product supplied by writ petitioner; that therefore, ITC stood accumulated in this inverted tax structure; that this led to writ petitioner making a refund application under Section 54 of C-G & ST Act to first respondent, which is the Original Authority; that the first

respondent in and by two separate orders dated 06.01.2020 rejected the refund claim; that writ petitioner carried the matter in appeal by way of a statutory appeal under Section 107 of C-G & ST Act to second respondent (to be noted, second respondent is the Appellate Authority under C-G & ST Act); that the Appellate Authority by way of two separate orders dated 22.07.2022 [in WP.No.293 of 2023] and 28.07.2022 [in WP.No.294 of 2023] allowed the appeals or in other words acceded to refund claims of writ petitioner, held that the writ petitioner is entitled to refund and also directed the first respondent to sanction the refund; that pursuant to such sanction, writ petitioner filed a second set of refund applications after the order of Appellate Authority {refund applications dated 05.08.2022 [in both writ petitions]}; that owing to pendency of refund applications, writ petitioner sent a representation more in the nature of a reminder being representations both dated 14.11.2022; that complaining of inaction qua these representation, captioned writ petitions have been filed *inter alia* to mandamus the first respondent to dispose of 14.11.2022 representations, which are in the nature of reminders to give effect to the orders of Appellate Authority (second respondent) dated 22.07.2022 and 28.07.2022 [alluded to earlier]; that State Counsel who accepted notice on behalf of all the three respondents in both writ petitions submitted that State is in contemplation about assailing the two orders of Appellate Authority and that appeals lie to a Tribunal *inter alia* under Section 112 of C-G & ST Act.

5. This Writ Court having captured the factual matrix in a nutshell, now proceeds to consider the facts and circumstances of the case in search of an answer to the question as to whether the prayer of writ petitioner deserves to be acceded to and if that be so, in what manner.

6. The point is fairly simple. The 'three respondents' are collectively referred to as 'State' or 'Revenue'. Revenue certainly has a right to file an appeal under Section 112 of C-G & ST Act as right of appeal is a statutory right. This writ Court is informed without any disputation or contestation by both sides that Tribunal qua Section 112 of C-G & ST Act is yet to be constituted. This means that it is open to State to file a writ petition in this Court assailing aforementioned two orders of Appellate Authority. To be noted, in another matter arising under C-G & ST Act, owing to Tribunal not having been constituted, a dealer/assessee filed a writ petition in WP.No.34680 of 2022 (***Suvarna Fibrotech Pvt Ltd., Vs. The Assistant Commissioner (ST) (FAC) and another***) and this Writ Court entertained the same and disposed of writ

petition in and by an order dated 02.01.2023. To be noted facts are different in ***Suvarna Fibrotech*** case but it is mentioned only to highlight that this Writ Court has entertained a writ petition owing to Tribunal not having been constituted.

7. This Court is informed that the limitation i.e., prescribed period of limitation qua appeal to Tribunal under Section 112 of C-G & ST Act is six months from the date of the order of Appellate Authority. That six months in the case on hand is yet to elapse but it is in the anvil. However, learned State counsel [Puducherry] brings to the notice of this Court that the Government of Union Territory of Puducherry in exercise of powers under Section 172 of Puducherry Goods and Services Tax Act has enacted an Order captioned 'THE PUDUCHERRY GOODS AND SERVICES TAX [NINTH REMOVAL OF DIFFICULTIES] ORDER, 2019' which says that reckoning date as regards six months qua Section 112 of C-G & ST Act shall be the date of communication of order or the date on which the President or Tribunal enters Office after its constitution under Section 109 whichever is later. A careful perusal of this Order and more particularly paragraph 2 of this Order and to state with greater specificity paragraph 2(b) (i) & (ii) of this Order shows that later of two dates

can be taken into account for arriving at the reckoning date. As this Order is not under challenge before this Writ Court, the questions as to whether this Order will apply, whether it would pass muster qua Rule making powers under parent Statute and whether the Revenue has to file a writ petition within prescribed time (limitation) in line with ***Smith Kline*** principle [***Assistant Commissioner (CT) LTU, Kakinada & Others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***(2020) 19 SCC 681***] assailing the orders of Appellate Authority are left open.

8. Be that as it may, considering the facts and circumstances of the case and more particularly in the light of aforementioned orders, it is deemed appropriate to direct the first respondent to take up the aforementioned representations dated 14.11.2022 and consider the same on merits after eight weeks from today i.e., after 10.03.2023. In the interregnum, it is open to Revenue to pursue remedies available to it. When 14.11.2022 representations are taken up by the first respondent post eight weeks from today i.e., the reckoning date being 11.03.2023, the same shall be disposed of on its own merits and in accordance with law and subject of course to any other orders by Courts or Quasi Judicial Authorities or Tribunals as expeditiously as the

business of first respondent would permit but in any event on or before 31.03.2023.

9. Captioned writ petitions are disposed of with the aforesaid directives in the aforesaid manner. There shall be no order as to costs.

06.01.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case: Yes/No

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To

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M.SUNDAR, J

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